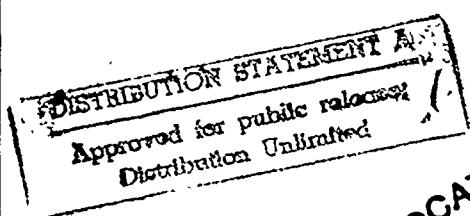


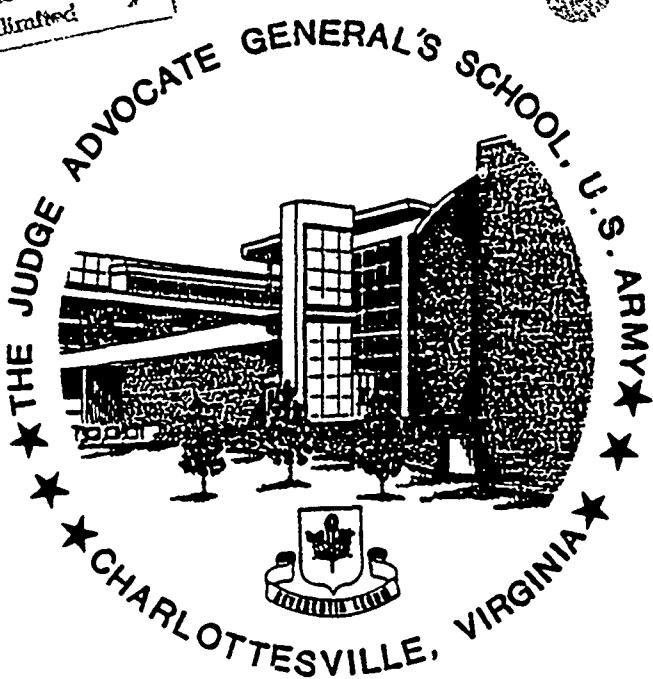
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# LEGAL ASSISTANCE PREVENTIVE LAW SERIES



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Legal Assistance Branch  
Administrative and Civil Law Division  
The Judge Advocate General's School  
United States Army  
Charlottesville, Virginia 22903-1781

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JUNE 1994

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## PREFACE

This publication is one of a series prepared and/or distributed by the Legal Assistance Branch of the Administrative and Civil Law Division of The Judge Advocate General's School (TJAGSA). Legal assistance attorneys should find this series useful in the delivery of legal assistance. The information contained herein is as current as possible as of the date of publication. Legal assistance attorneys are reminded that the law is subject to legislative amendment and judicial interpretations that occur much more rapidly than this publication can be updated and distributed. For this reason, this publication should be used only as a guide and not final authority on any specific law or regulation. Where appropriate, legal assistance attorneys should consult more regularly updated references before rendering legal advice.

The series contains summaries of the law, guidance, and sample documents for handling common problems. The sample documents are guides only. Legal assistance attorneys should ensure that the samples are adapted to local circumstances and are consistent with current format provisions in Army Reg. 25-50 prior to reproduction and use.

While forms can save time for both attorneys and clerk-typists, indiscriminate use of such forms is inherently dangerous. Standard form language may not be fully appropriate for the particular client's situation. Also, the use of a form detracts from the personalized, individual service attorneys strive to give their clients. Nonetheless, the careful, selective use and editing of forms can enhance an attorney's service to clients by reducing document-drafting time and helping remind the attorney of important requirements in drafting legal documents.

The series is part of the continuing effort to improve and expand the resources available to legal assistance practitioners. As you use this publication, if you have any recommendations for improvement, please send your comments and suggestions to The Judge Advocate General's School, ATTN: JAGS-ADA-LA, Charlottesville, Virginia 22903-1781.

Legal assistance attorneys are encouraged to maintain this publication in a three-ring binder until a replacement is issued. In future years, specific page changes may be published instead of reprinting the entire publication.

Each year, the Legal Assistance Branch receives many requests for its publications. Because of limited budgetary and personnel resources, however, additional outside distribution of these materials in printed format may not be possible.

There are, however, several ways to obtain many of these publications. First, the Defense Technical Information Center (DTIC) makes some of these publications available to government users. Practitioners may request the necessary information and forms to become registered as a user from: Defense Technical Information Center, Cameron Station, Alexandria, VA 22314-6145, telephone (703) 274-7633.

Second, many of the Legal Assistance Branch publications have been converted to ASCII word processing documents, compressed for file storage and transmission, and uploaded on to the Legal Automation Army Wide System Bulletin Board System (LAAWS BBS). Users can sign on the LAAWS BBS by dialing (703) 693-4143 with the following telecommunications configuration: 2400 baud; parity-none; 8 bits; 1 stop bit; full duplex; Xon/Xoff supported; VT100 terminal emulation. After signing on to the LAAWS BBS, the desired publication can be downloaded to the user's computer. Consult The Army Lawyer for current information on new publications available through the LAAWS BBS. Questions concerning LAAWS BBS should be directed to the OTJAG LAAWS office at (703) 805-2922.

Finally, those individuals who are unable to access DTIC or the LAAWS BBS may send a written request for Legal Assistance Branch publications to TJAGSA, ATTN: JAGS-ADA-LA, Charlottesville, VA 22903-1781. The request must be accompanied by a formatted floppy disk (one per requested publication) to obtain a compressed or "zipped" version of the publication. The compressed file (having the ".ZIP" extension) will be copied onto the floppy and mailed back to the requestor.

The following Legal Assistance Branch publications are currently available in "zipped" format:

<u>Number</u>	<u>Title</u>
JA 260	Soldiers' & Sailors' Civil Relief Act
JA 261	Legal Assistance Real Property Guide
JA 262	Legal Assistance Wills Guide
JA 263	Legal Assistance Family Law Guide
JA 265	Legal Assistance Consumer Law Guide
JA 267	Legal Assistance Office Directory
JA 268	Legal Assistance Notarial Guide
JA 269	Legal Assistance Federal Income Tax Information Series
JA 271	Legal Assistance Office Administration Guide
JA 272	Legal Assistance Deployment Guide
JA 274	Uniformed Services Former Spouses' Protection Act - Outline and References
JA 275	Model Tax Assistance Program
JA 276	Preventive Law Series

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This publication does not promulgate Department of the Army policy and does not necessarily reflect the views of The Judge Advocate General or any government agency.



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Arquilla, "The New Army Legal Assistance Regulation," The Army Lawyer, May 1993, at 3.

Sullivan, "Preventive Law by Handout," The Army Lawyer, May 1984, at 29. Sullivan, "Preventive Law: The Genuine Article," The Army Lawyer, Sep. 1984, at 35.

Eveland, "Professional Responsibility Opinion 93-1" (re: plagiarism and copyright violations by legal assistance attorney), The Army Lawyer, Jun. 1993, at 55.

Consumer's Resource Handbook (published annually by the United States Office of Consumer Affairs) - available by writing: Handbook, Consumer Information Center, Pueblo, CO 81009.

Consumer Information Catalog (published quarterly) - available by writing: Consumer Information Center - 4B, P.O. Box 100, Pueblo, Colorado 81002.



## LEGAL ASSISTANCE PREVENTIVE LAW SERIES

### INTRODUCTION

"An ounce of prevention is worth a pound of cure."

Nothing could be truer in Legal Assistance.

The more educated our service members are about consumer issues, estate planning, family support obligations, divorce and separation, the less likely they are to need our services. With this in mind, Legal Assistance offices should be actively engaged in "preventive law" practice.

What attorney has not asked a client, "Why didn't you seek advice from an attorney before you did this?" Practically speaking, if every service member heeded this advice, Legal Assistance offices would be overwhelmed. Instead of individual appointments, the best way to provide general information on a wide range of topics is to publish preventive law handouts and news articles.

The Preventive Law Series (JA 276) is intended to help your office design a preventive law program tailored to your specific needs. Before using the material, read each article carefully to ensure it comports with the law of your jurisdiction.

The handouts may be reproduced individually for distribution at the Legal Assistance office and/or may be combined to form a comprehensive preventive law pamphlet available to all eligible persons at your installation.

Consult the Deployment Guide (JA 272) for additional material on wills, powers of attorney, the Soldiers' and Sailors' Civil Relief Act, survivor benefits, and the Veterans' Reemployment Act.

Our goal is to continuously improve the Preventive Law Series. If you have material which would be beneficial to include in the next issue, please send it on disk (WordPerfect or Enable) to: The Judge Advocate General's School, U.S. Army, ADA-LA, 600 Massie Road, Charlottesville, Virginia 22901.

**x**

## **Preventive Law in the Army Legal Assistance Program**

(excerpts from Arquilla, "The New Army Legal Assistance Regulation," *The Army Lawyer*, May 1993, at 3).

Preventive law once was a separate program with its own Army regulation.<sup>1</sup> The "program" and its regulation then was incorporated in the previous legal assistance regulation.<sup>2</sup> AR 27-3 discusses preventive law as an important area in the Army Legal Assistance Program, but dispenses with much of the verbiage that was used to describe it in previous regulations.<sup>3</sup>

Preventive law is not peculiar to legal assistance, despite its close association with legal assistance in the past.<sup>4</sup> For government practitioners, preventive law is an effective method to practice law, whether the area of law is legal assistance, contract law, environmental law, claims, administrative law, or criminal prosecution. Preventive law saves time, effort, and expense by preventing problems instead of solving them.

AR 27-3 requires commanders to sponsor preventive law initiatives,<sup>5</sup> and makes them responsible for ensuring that preventive law services are provided in their commands.<sup>6</sup> SJAs, on the other hand, are required to seek "command support and involvement" on their own preventive law initiatives,<sup>7</sup> and are encouraged to be aggressive and innovative in their preventive law efforts.<sup>8</sup>

Preventive law remains an important area in the Army Legal Assistance Program. Keeping a client out of legal trouble is more important to a client than helping him or her with damage control after the mistake is made. AR 27-3 directs that the common legal problems of soldiers and their families be examined for ways in which those problems can be avoided, that regulatory or statutory "fixes" be recommended, and that these solutions be shared with other attorneys providing legal assistance.<sup>9</sup> AR 27-3 also requires that "[l]ocal print and electronic media and training and education programs" be used to inform soldiers and their families of their legal rights and entitlements; local legal problems and ways to avoid them; and the location, telephone numbers, and hours of operation of the legal assistance office.<sup>10</sup>

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1. DEP'T OF ARMY, REG. 600-14, PERSONAL GENERAL: PREVENTIVE LAW PROGRAM (30 Sept. 1965).

2. AR 27-3 (1989), supra note 3, chap. 4.

3. Preventive law is no longer a program within a program. Cf. id.

4. Although AR 27-1, supra note 72, para. 5-3, suggests that preventive law is limited to legal assistance, DRAFT REVISION TO AR 27-1, supra note 69, para. 5-3, clearly indicates that it is not so limited.

5. AR 27-3, supra note 1, para. 1-4f(3).

6. Id. para. 3-3a.

7. Id. para. 1-4g(8).

8. Id. paras. 1-4g(9), 3-3b.

9. Id. para. 3-4a(1), (5).

10. Id. para. 3-4b.

SAMPLE OFFICE HANDOUTS COVER

PREVENTIVE LAW SERIES

Legal Assistance Program

TOPIC

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If you have any questions concerning the  
topic of this pamphlet, please contact the  
Legal Assistance Office

Legal Assistance Office  
Phone:

Office of the Staff  
Judge Advocate



## ADOPTION FACT SHEET

### 1. Q. What is adoption?

A. Adoption is the procedure by which a child born to one set of parents becomes the legal child of another parent or couple, who then assume all the parental rights and duties concerning the child. The word "child" does not mean only infants - it refers to one who is under eighteen years of age. The legal result is that the child ceases to be the legal obligation of the natural parents and becomes the responsibility of the adoptive parents.

### 2. Q. How are children adopted?

A. Children may be placed for adoption in a variety of ways. These are as follows:

a. An "agency placement" is the procedure for adoption used by licensed adoption agencies.

b. A "direct placement" or "independent adoption" is one made by the natural parents directly into an unrelated adoptive home without the assistance of an agency.

c. A "step-parent adoption" is one in which the new spouse of a parent agrees to adopt the child of that parent born before the marriage of the spouses.

All of these procedures require court approval and a home study, as will be explained later in this pamphlet. There is no one form of adoption that is "right," since different procedures may be better for one couple or another.

### 3. Q. My wife or husband and I want to adopt a child - what's the difference between agency placement and direct (non-agency) placement?

A. It might seem at first much easier to adopt a child directly from the mother than to apply to a licensed adoption agency. Many prospective parents are honestly concerned about fees, waiting lists, background checks, and home studies. As a practical matter, however, there may be many more problems (although these can be overcome) with direct placements than with agency adoptions. In some states, for example, the hospital will not release an infant to someone other than a natural parent without a valid approval by the county or state

## ADOPTION FACT SHEET

Department of Social Services (DSS), or its equivalent. This approval must be done well in advance of the baby's birth. In some states it is a criminal misdemeanor to separate a child under six (6) months of age from his or her natural parents without such approval of county or state authorities. In many states, it is also a crime for the new set of parents (or anyone else) to pay for expenses associated with the direct placement of the child and this includes legal fees, medical expenses, home care arrangements, and any other costs. Direct placement, on the other hand, will require considerable effort on the part of the prospective parents regarding the natural parents of the child (both in finding them and obtaining valid and legal consents to the adoption).

4. Q. Are there more problems with direct placement than with placement through an agency?

A. Yes - the problems are greater with independent or direct placement (without an agency) than with agency placement. In addition to the legal problems outlined above, there are many practical difficulties. Couples who wish to adopt should ask themselves:

a. What do we know about the child's background, medical history, and birth parents?

b. How do we know that the legal procedures have been followed, that the proper consent forms have been obtained from the birth parents, and that the child is legally available for adoption?

c. How can we guarantee privacy and security for ourselves and for the child after the adoption and avoid interference by one or both of the birth parents?

d. How can we and the child be best protected for the future?

When an agency placement is done, every effort is made to make sure that the child is placed in a suitable adoptive home with parents well matched to the child's background, capabilities, and medical history. The adoptive parents will be told enough about the child to inform them of these factors but not enough to identify the birth parents. The child is placed with a couple where there is no danger of recognition by the natural parents or their friends or relatives. The adoptive parents are assured that the child can legally be adopted. Their home environment and backgrounds are checked and studied thoroughly to make sure that they are ready and able to adopt the child and provide adequately for him or her. An agency placement means that every available protection has been given to the natural parents, the child, and the adoptive parents under state law.

5. Q. What are the legal steps to be taken in adopting a child?

A. In adopting a child, it is necessary to file certain papers in court and, in most cases, to retain a private attorney for assistance. The procedures will vary in individual cases, depending on whether the proposed adoption is one based on abandonment, consent by the other parent, or placement by an agency. If you have a question about whether you will need a private attorney, you should consult a legal assistance officer.

In general, procedures for adoption are handled by a local court in the county where the adoption is to take place. There is generally a filing fee required with the petition.

The basic steps for adoption are as follows:

a. The first step is the filing of the petition for adoption. It is signed by the adoptive parents and is filed in the county where the child is living, the county in which the adoption agency is located, or the county in which the adoptive parents live.

b. If the adoption is by consent (either a step-parent adoption or an agency placement, for example), the next step is the filing of the consent to the child's adoption by the natural parent or parents who would give such a consent. In some states, a child over a certain age, such as twelve, for example, must also consent to his or her own adoption.

c. Next is the order of reference and the home study. The order of reference is involved in referring the case to the adoption agency or, in the case of a step-parent adoption by consent, to the county Department of Social Services, or its equivalent, for the completion and filing of a home study of the adoptive parent or parents, their background and home situation, and how the child and parents are adjusting to each other. Reports of recent medical examinations of the child and parents, as well as any other pertinent information, are also included in the home study.

d. Once the home study is completed, an interlocutory decree may be issued. This is a temporary court order giving the adoptive parents custody of the child until the final order is issued. The interlocutory decree is not a final order. It will usually take up to a year between the interlocutory decree and the final decree of adoption, but this varies from state to state.

e. The final step is the filing of the final order of adoption. This makes the child legally one of the family, just as if he or she had been born to the adoptive parents. The child is able to inherit real and personal property just

## ADOPTION FACT SHEET

as a natural child would. After the final decree, the birth certificate of the child is amended and the new certificate will show the adoptive parents as the birth parents of the child.

6. Q. If I give my consent to have my child adopted, can I change my mind later?

A. The laws of each state permit a natural parent to withdraw his or her consent to the adoption proceedings only in very limited circumstances. Basically, the consent can be withdrawn only within certain time limits, such as within 3 months of giving consent. Again, the rules vary from state to state.

7. Q. If my child is adopted, do I have any legal rights or obligations toward the child?

A. No. Once the child has been adopted, the natural parents cease to have any legal rights or obligations toward the child. If a natural parent owed a child support obligation, that obligation would stop once the child was adopted.

ADOPTION  
&  
ILLEGITIMATE CHILDREN

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

1. Q. What is adoption?

A. Adoption is the procedure by which a child born to one set of parents becomes the legal child of another parent or couple, who then assume all the parental rights and duties concerning the child. The word "child" does not mean only infants - it refers to one who is under eighteen years of age. The legal result is that the child ceases to be the legal obligation of the natural parents and becomes the responsibility of the adoptive parents.

2. Q. How are children adopted?

A. Children may be placed for adoption in a variety of ways. These are as follows:

a. An "agency placement" is the procedure for adoption used by county Departments of Social Services or licensed private adoption agencies.

b. A "direct placement" or "independent adoption" is one made by the natural parents directly into an unrelated adoptive home without the assistance of an agency.

c. A "relative adoption" is one in which a parent's relative (often a step-parent) agrees to adopt the child of that parent. All of these procedures require court approval and a home study, as will be explained later in this pamphlet. There is no one form of adoption that is "right", since different procedures may be better for one couple or another.

3. Q. My wife and I want to adopt a child - what's the difference between agency placement and direct (non-agency) placement?

A. It might seem at first much easier to adopt a child directly from the mother than to apply to a county Department of Social Services or a licensed private adoption agency. Many prospective parents are honestly concerned about fees, waiting lists, background checks and home studies. As a practical matter however, there may be many more problems (although these can be

vercome) with direct placements than with agency adoptions. In North Carolina, for example, the hospital will not release an infant to someone other than a natural parent. It is also a crime in North Carolina for the new set of parents (or anyone else) to pay for any expenses associated with the direct placement of the child and this includes medical expenses, home care arrangements and any other costs. Direct placement, on the other hand, will require considerable effort on the part of the prospective parents regarding the natural parents of the child (both in finding them and obtaining valid and legal consents to the adoption).

4. Q. Where can we find out about adopting a child by agency placement?

A. There are adoption agencies in every state, including the local county Department of Social Services as well as private agencies. Check with your Department of Social Services or your lawyer or legal assistance officer for further information. The legal requirements for agency placement are set forth later in this pamphlet.

5. Q. Are there more problems with direct placement than with placement through an agency?

A. Yes - the problems are greater with independent or direct placement (without an agency) than with agency placement. In addition to the legal problems outlined above, there are many practical difficulties. Couples who wish to adopt should ask themselves:

a. What do we know about the child's background, medical history and birth parents?

b. How do we know that the legal procedures have been followed, that the proper consent forms have been obtained from the birth parents, and that the child is legally available for adoption?

c. How can we guarantee privacy and security for ourselves and the child after the adoption and avoid interference by one or both of the birth parents?

d. How can we and the child be best protected for the future?

When an agency placement is done, every effort is made to make sure that the child is placed in a suitable adoptive home with parents well matched to the child's background, capabilities and medical history. The adoptive parents will be told enough about the child to inform them of these factors but not enough to identify the birth parents. The child is placed with a couple where there is no danger of recognition by the natural parents or

their friends or relatives. The adoptive parents are assured that the child can legally be adopted. Their home environment and backgrounds are checked and studied thoroughly to make sure that they are ready and able to adopt the child and provide adequately for him or her. An agency placement means that every available protection has been given to the natural parents, the child and the adoptive parents under state law.

6. Q. What are the legal steps to be taken in adopting a child?

A. In adopting a child, it is necessary to file certain papers in court and, in some cases, to retain a private attorney for assistance. The procedures will vary in individual cases, depending on whether the proposed adoption is one based on abandonment, consent by the other parent or placement by an agency. If you have a question about whether you will need a private attorney, you should consult a legal assistance officer. Though procedures may vary among states, the basic steps for adoption are as follows:

a. The first step is the filing of the petition for adoption. It is signed by the adoptive parents and is filed in the county where the child is living, the county in which the adoption agency is located, or the county in which the adoptive parents live.

b. If the adoption is by consent (either a "relative adoption" or an agency placement, for example), the next step is the filing of the consent to the child's adoption by the natural parent or parents who would give such a consent. A child over twelve must also consent to his or her own adoption. If the adoption is based on abandonment, then a separate petition for termination of parental rights must be filed in district court, followed by an order terminating the rights of the abandoning parent.

c. Next is the order of reference and the home study. The order of reference is involved in referring the case to the licensed private adoption agency or to the county Department of Social Services for the completion and filing of a home study. The home study is a report on the proposed adoption, and it includes a history of the adoptive parent or parents and their background and home situation, the same information for the child and birth parents, and how the child and parents are adjusting to each other. Reports of recent medical examinations of the child and parents, as well as any other pertinent information, are also included in the home study.

d. Once the home study is filed with the court, an interlocutory decree is issued. This is a temporary court order giving the adoptive parents custody of the child until the final order is issued. The interlocutory decree is not a final order.

It will usually take up to a year between the interlocutory decree and the final decree of adoption.

e. At the appropriate time, the adoption agency files a second report with the court describing the progress of the adoptive placement.

f. The final step is the filing of the final order of adoption. This makes the child legally one of the family, just as if he or she had been born to the adoptive parents. The child is able to inherit real and personal property just as a natural child would. After the final decree, the birth certificate of the child is amended and the new certificate will show the adoptive parents as the birth parents of the child.

7. Q. If I give my consent to have my child adopted, can I change my mind later?

A. The laws of each state permit a natural parent to withdraw his or her consent to the adoption proceedings only in very limited circumstances. In North Carolina, for example, basically the consent can be withdrawn within 30 days of giving it unless the court has entered the interlocutory decree or final order of adoption or unless the child has been placed with a duly licensed child placing agency. In that case, the consent can only be withdrawn within 30 days of giving it. If, however, an adoption petition has not been filed within 18 months of the signing of the consent, then the consent also may be revoked.

8. Q. If my child is adopted, do I have any legal rights or obligations towards the child?

A. No. Once the child has been adopted, the natural parents cease to have any legal rights or obligations toward the child. If a natural parent owed a child support obligation, that obligation would stop once the child was adopted.

9. Q. How can I find out more about adoption proceedings in North Carolina?

A. Check with your local county Department of Social Services. Ask for their pamphlet detailing the state's adoption program. In North Carolina, the pamphlet is entitled "The Adoption Program in North Carolina", and may be obtained by writing to Social Services Division, North Carolina Department of Human Resources, 325 North Salisbury Street, Raleigh, North Carolina 27611. (Also, request Information Bulletin No. 26). Much of the material in this handout was adapted from the North Carolina pamphlet.

10. Q. I am not married and have a child out of wedlock. If I do not want to place the child for adoption, can I obtain support for the child from his father if I keep the child?

A. Yes - the law makes no distinction in support obligations between parents who are married when the child is born and parents who are not married when the child is born. Likewise, the law allows the courts to determine custody and visitation rights of parents of legitimate, as well as illegitimate children, and there are no distinctions or preferences given to either mothers or fathers under many state laws concerning who is entitled to custody of a child or what type of visitation rights should be allowed. In North Carolina, for example, mothers are not automatically granted custody of illegitimate children, and neither are fathers of illegitimate children barred from visitation rights with the children. It may be necessary, however, to obtain the services of a private attorney and file a complaint or motion in court for a hearing as to custody or visitation rights.

11. Q. How can I prove to the court who is the father of my illegitimate child?

A. Generally, state law allows anyone involved in the case to file a motion in court asking for a hearing on blood tests for the mother, child and alleged father of the child. The court frequently allows the blood tests to be taken and the results are reported back to the court for a further determination of paternity. The tests used most often to "prove" paternity are the "Red Cell" test and the "HLA" (Human Leukocyte Antigen) test. These tests usually cost upwards of \$100 per person and take two to four weeks for the results to be reported. There usually are several laboratories in the state that can perform these tests, and the resulting report will be accurate enough to exclude 90-95% of falsely accused fathers. The person making the motion for blood tests usually is required to pay for them, but the alleged father can be ordered to pay back the cost of the tests if he is found to be the natural father of the child. Such blood tests cannot be conducted on a child until he or she is at least 6 months old.

## AIRLINE OVERBOOKING

Airlines frequently overbook flights to compensate for cancellations and no-shows, but sometimes too many people show up with confirmed reservations and somebody gets "bumped" off the flight.

### VOLUNTARY AND INVOLUNTARY BUMPING

Every airline has its own rules about bumping from overbooked flights. All airlines are allowed to overbook flights and may deny boarding on an overcrowded flight. Before they involuntarily bump passengers, however, they will ask for volunteers who agree to delay their travel. Volunteers or those involuntarily bumped will get compensation of the airline's choosing. All passengers must report to the boarding gate at least 20 minutes prior to boarding, or face the possibility of involuntary bumping with no compensation.

But before you volunteer to be bumped, see if the next flight is acceptable to you. Make sure your seat is confirmed, because if you are just on a waiting list, you could end up stranded.

Also find out if the airline will provide such things as food and lodging if you have to wait overnight for a flight. If not, you might have to spend the money they offer you on these things.

### MILITARY RULES FOR VOLUNTARY AND INVOLUNTARY BUMPING

If you are traveling on government orders and you are asked to voluntarily relinquish your seat, you may do so and may keep the money, as long as the delay does not affect the performance of your official duty or cost the government money. For example, if voluntarily giving up your seat and taking a seat on a later flight would cause you to miss an official meeting, be late signing in from leave or pass, or would cause the government to pay you more travel money, you may not voluntarily give up your seat. If you are involuntarily bumped, then any money or check must be turned in to the government, even if it does not interfere with the performance of your duties or cost the government additional money.

## AIRLINE OVERBOOKING

### CANCELLATIONS AND DELAYS

You should also allow some leeway in your schedule because cancelled and delayed flights are quite common. Airlines usually refuse to pay passengers for financial losses resulting from these because their schedules aren't guaranteed.

### FREQUENT FLYER POINTS

If a servicemember receives frequent flyer points for air travel that is funded by the government, the points belong to the government and cannot be used for air travel for personal reasons. The points may be used to offset the cost of official travel, however.

### FOR MORE HELP

If you need more help or information on this or other consumer problems, contact your Legal Assistance Office or the Attorney General's Consumer Protection Office.

## BANKRUPTCY

### Questions and Answers for Clients

Distributed by the Legal Assistance Office  
Office of the Staff Judge Advocate

This information was adapted by the National Consumer Law Center (NCLC) from a pamphlet prepared by Legal Services, Inc., under a grant from the Pennsylvania Law Coordination Center, and from NCLC, Surviving Debt (1992). Those seeking more detailed information or technical assistance should consult NCLC, Consumer Bankruptcy Law and Practice (4th ed. 1992), or NCLC, Surviving Debt. NCLC's commitment to and support of consumers is appreciated.

A decision to file for bankruptcy should be made only after determining that bankruptcy is the best way to deal with your financial problems. This brochure cannot explain every aspect of the bankruptcy process. If you still have questions after reading it, you should speak with an attorney familiar with bankruptcy or a paralegal working for an attorney.

#### What is Bankruptcy?

Bankruptcy is a legal proceeding in which people who cannot pay their bills can get a fresh financial start. The right to file for bankruptcy is provided by federal law, and all bankruptcy cases are handled in federal court. Filing bankruptcy immediately stops all of your creditors from seeking to collect debts from you, at least until your debts are sorted out according to the law.

#### What Can Bankruptcy Do for Me?

Bankruptcy may make it possible for you to:

- Eliminate the legal obligation to pay most or all of your debts. This is called a "discharge" of debts. It is designed to give you a fresh financial start.
- Stop foreclosure on your house or mobile home and allow you an opportunity to catch up on missed payments. (Bankruptcy does not, however, automatically eliminate mortgages and other liens on your property without payment.)
- Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
- Stop wage garnishment, debt collection harassment, and similar creditor actions to collect a debt.
- Restore or prevent termination of utility service.

- Allow you to challenge the claims of creditors who have committed fraud or who are otherwise trying to collect more than you really owe.

#### What Bankruptcy Cannot Do

Bankruptcy, however, cannot cure every financial problem. Nor is it the right step for every individual. In bankruptcy, it is usually not possible to:

- Eliminate certain rights of "secured" creditors. A "secured" creditor has taken a mortgage or other lien on property as collateral for the loan. Common examples are car loans and home mortgages. You can force secured creditors to take payment over time in the bankruptcy process and bankruptcy can eliminate your obligation to pay any additional money if your property is taken. Nevertheless you generally cannot keep the collateral unless you continue to pay the debt.
- Discharge types of debts singled out by the bankruptcy law for special treatment such as child support, alimony, some student loans, court restitution orders, criminal fines, and some taxes.
- Protect cosigners on your debts. When a relative or friend has co-signed a loan, and the consumer discharges the loan in bankruptcy, the cosigner may still have to repay all or part of the loan.
- Discharge debts that arise after bankruptcy has been filed.

#### What Different Types of Bankruptcy Cases Should I Consider?

There are four types of bankruptcy cases provided under the law:

- Chapter 7 is known as "straight" bankruptcy or "liquidations." It requires a debtor to give up property which exceeds certain limits called "exemptions", so the property can be sold to pay creditors.
- Chapter 11, known as "reorganization", is used by business and a few individual debtors whose debts are very large.
- Chapter 12 is reserved for family farmers.
- Chapter 13 is called "debt adjustment". It requires a debtor to file a plan to pay debts (or parts of debts) from current income.
- Most people filing bankruptcy will want to file under either chapter 7 or chapter 13. Either type of case may be filed individually or by a married couple filing jointly.

### Chapter 7 (Straight Bankruptcy)

In a bankruptcy case under chapter 7, you file a petition asking the court to discharge your debts. The basic idea in a chapter 7 bankruptcy is to wipe out (discharge) your debts in exchange for your giving up property, except for "exempt" property which the law allows you to keep. In most cases, all of your property will be exempt. But property which is not exempt is sold, with the money distributed to creditors.

If you want to keep property like a home or a car and are behind on the payments on a mortgage or car loan, a chapter 7 case probably will not be the right choice for you. That is because chapter 7 bankruptcy does not eliminate the right of mortgage holders or car loan creditors to take your property to cover your debt.

### Chapter 13 (Reorganization)

In a chapter 13 case you file a "plan" showing how you will pay off some of your past-due and current debts over three to five years. The most important thing about a chapter 13 case is that it will allow you to keep valuable property--especially your home and car--which might otherwise be lost, if you can make the payments which the bankruptcy law requires to be made to your creditors. In most cases, these payments will be at least as much as your regular monthly payments on your mortgage or car loan, with some extra payment to get caught up on the amount you have fallen behind.

You should consider filing a chapter 13 plan if you

- (1) own your home and are in danger of losing it because of money problems;
- (2) are behind on debt payments, but can catch up if given some time;
- (3) have valuable property which is not exempt, but you can afford to pay creditors from your income over time.

You will need to have enough income in chapter 13 to pay for your necessities and to keep up with the required payments as they come due.

### **What Does It Cost to File for Bankruptcy?**

It now costs \$150 to file for bankruptcy, whether for one person or a married couple. The court may allow you to pay this filing fee in installments if you cannot pay all at once. If you hire an attorney you will also have to pay the attorney's fees you agree to.

## **What Property Can I Keep?**

**Note to the Attorney:** This answer is accurate for states that permit the federal exemptions. For states which have opted out of federal exemptions, the answer must be adapted to indicate that the debtor's exemptions are those specified by state law.

In a chapter 7 case, you can keep all property which the law says is "exempt" from the claims of creditors. You can choose between your exemptions under your state law or under federal law. In many cases, the federal exemptions are better.

Federal exemptions include:

- \$7,500 in equity in your home;
- \$1,200 in equity in your car;
- \$200 per item in any household goods up to a total of \$4,000;
- \$750 in things you need for your job (tools, books, etc);
- \$400 in any property, plus part of the unused exemption in your home;
- Your right to receive certain benefits such as social security, unemployment compensation, veteran's benefits, public assistance, and pensions--regardless of the amount.

The amounts of the exemptions are doubled when a married couple files together.

In determining whether property is exempt, you must keep a few things in mind. The value of property is not the amount you paid for it, but what it is worth new. Especially for furniture and cars, this may be a lot less than what you paid or what it would cost to buy a replacement.

You also only need to look at your equity in property. This means that you count your exemptions against the full value minus any money that you owe on mortgages or liens. For example, if you own a \$50,000 house with a \$40,000 mortgage, you count your exemptions against the \$10,000 which is your equity if you sell it.

While your exemptions allow you to keep property even in a chapter 7 case, your exemptions do not make any difference to the right of a mortgage holder or car loan creditor to take the property to cover the debt if you are behind. In a chapter 13 case, you can keep all of your property if your plan meets the requirements of the bankruptcy law. In most cases you will have to pay the mortgages or liens as you would if you didn't file bankruptcy.

## **What Will Happen to My Home and Car If I File Bankruptcy?**

In most cases you will not lose your home or car during your bankruptcy case as long as your equity in the property is fully exempt. Even if your property is not fully exempt, you will be able to keep it, if you pay its non-exempt value to creditors in chapter 13.

However, some of your creditors may have a "security interest" in your home, automobile or other personal property. This means that you gave that creditor a mortgage on the home or put your other property up as collateral for the debt. Bankruptcy does not make these security interests go away. If you don't make your payments on that debt, the creditor may be able to take and sell the home or the property, during or after the bankruptcy case.

There are several ways that you can keep collateral or mortgaged property after you file bankruptcy. You can agree to keep making your payments on the debt until it is paid in full. Or you can pay the creditor the amount that the property you want to keep is worth. In some cases involving fraud or other improper conduct by the creditor, you may be able to challenge the debt. If you put your household goods as collateral for a loan (other than a loan to buy them), you can usually keep your property without making any more payments on that debt.

## **Can I Own Anything After Bankruptcy?**

Yes! Many people believe they cannot own anything for a period of time after filing for bankruptcy. This is not true. You can keep your exempt property and anything you obtain after the bankruptcy is filed. However, if you receive an inheritance, a property settlement, or life insurance benefits within 180 days after filing for bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt.

## **Will Bankruptcy Wipe Our All My Debts?**

Yes, with some exceptions. Bankruptcy will not normally wipe out:

- (1) money owed for child support or alimony, fines, and some taxes;
- (2) debts not listed on your bankruptcy petition;
- (3) loans you got by knowingly giving false information to a creditor, who reasonable relied on it in making you the loan;
- (4) debts resulting from "willful and malicious" harm;
- (5) student loans owed to a school or government body, except if;
  - the loan first became due more than 7 years before the bankruptcy was filed or

-- the court decides that payment would be an undue hardship;

(6) mortgages and other liens which are not paid in the bankruptcy case (but bankruptcy will wipe out your obligation to pay any additional money if the property is sold by the creditor).

### **Will I Have to Go to Court?**

In most bankruptcy cases, you only have to go to a proceeding called the "meeting of creditors" to meet with the bankruptcy trustee and any creditor who chooses to come. Most of the time, this meeting will be a short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation.

Occasionally, if complications arise, or if you choose to dispute a debt, you may have to appear before a judge at a hearing. If your need to go to court, you will receive notice of the court date and time from the court and/or from your attorney.

### **Will Bankruptcy Affect My Credit?**

There is no clear answer to this question. Unfortunately, if you are behind on your bills, your credit may already be bad. Bankruptcy will probably not make things any worse.

The fact that you've filed a bankruptcy can appear on your credit record for ten years. But since bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills, and you may be able to get new credit.

### **What Else Should I Know?**

Utility services--Public utilities, such as the electric company, cannot refuse or cut off service because you have filed for bankruptcy. However, the utility can require a deposit for future service and you do have to pay bills which arise after bankruptcy is filed.

Discrimination--An employer or government agency cannot discriminate against you because you have filed for bankruptcy.

Driver's license--If you lost your license solely because you couldn't pay court-ordered damages caused in an accident, bankruptcy will allow you to get your license back.

Co-signers--If someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt.

## **How Do I Find a Bankruptcy Attorney?**

As with any area of the law, it is important to carefully select an attorney who will respond to your personal situation. The attorney should not be too busy to meet you individually and to answer questions as necessary.

The best way to find a trustworthy bankruptcy attorney is to seek recommendations from family, friends or other members of the community, especially any attorney you know and respect. You should carefully read retainers and other documents the attorney asks you to sign. You should not hire an attorney unless he or she agrees to represent you throughout the case.

In bankruptcy, as in all areas of life, remember that the person advertising the cheapest rate is not necessarily the best.

Many of the best bankruptcy lawyers do not advertise at all.

Paying for debt counseling is almost never a good idea. There is almost nothing that a paid debt counselor can offer other than a recommendation about whether bankruptcy is appropriate and a list of highly priced debt consolidation lenders. There is no good reason to pay someone for this service. A reputable attorney will generally provide counseling on whether bankruptcy is the best option. This avoids the double charge of having to pay a counselor and then an attorney. If bankruptcy is not the right answer for you, a good attorney will offer a range of other suggestions.

Document preparation services also known as "typing services" or "paralegal services" involve non-lawyers who offer to prepare bankruptcy forms for a fee. Problems with these services often arise because non-lawyers cannot offer advice on difficult bankruptcy cases and they offer no services once a bankruptcy case has begun. There are also many shady operators in this field, who give bad advice and defraud consumers.

When first meeting a bankruptcy attorney, you should be prepared to answer the following questions:

- What types of debt are causing you the most trouble?
- What are your significant assets?
- How did your debts arise and are they secured?
- Is any action about to occur to foreclose or repossess property or to shut off utility service?
- What are your goals in filing the case?

## **Can I File Bankruptcy Without an Attorney?**

Although it may be possible for some people to file a bankruptcy case without an attorney, it is not a step to be taken lightly. The process is difficult and you may lose property or other rights if you do not know the law. It takes patience and careful preparation. Chapter 7 (straight bankruptcy) cases are easier. Very few people have been able to successfully file chapter 13 (debt adjustment) cases on their own.

**REMEMBER: THE LAW OFTEN CHANGES. EACH CASE IS DIFFERENT. THIS FLYER IS MEANT TO GIVE YOU GENERAL INFORMATION, AND NOT TO GIVE YOU SPECIFIC LEGAL ADVICE.**

## **BUYING A MANUFACTURED HOME**

### **INTRODUCTION**

A home is often the most important purchase one makes in a lifetime. In recent years, nearly one-third of all new single-family homes bought have been manufactured homes. The Manufactured Housing Institute and the Federal Trade Commission's Office of Consumer and Business Education have developed materials to guide purchasers through this very critical purchasing decision.

If you are thinking about buying a manufactured home, this brochure will tell you about manufactured homes and how to go about choosing one that meets your needs and your pocketbook. You will learn how a home is transported to a site, how the site must be prepared, and how the home is installed on the site. You also will learn about manufactured home warranty protection. By following the guide's suggestions, you should be able to avoid some possible pitfalls when buying a manufactured home.

### **WARRANTIES AND OTHER PROTECTIONS FOR THE HOME PURCHASER**

Every manufactured home now offered for sale has a small red and silver seal that certifies that the home has been inspected during construction and safety standards. These standards were developed to assure a suitable level of performance in every manufactured home constructed in the U.S. Such standards, together with the manufacturer's warranties, serve to protect the home buyer.

### **FEDERAL CONSTRUCTION AND SAFETY STANDARDS**

Since mid-1976, all manufactured homes have been constructed to meet the federal building standards adopted and administered by the U.S. Department of Housing and Urban Development. This national code is called the National Manufactured Home Construction and Safety Standards. The code regulates manufactured home design and construction, strength and durability, fire resistance, and energy efficiency. It also prescribes the performance standards for the heating, plumbing, air conditioning, thermal, and electrical systems.

The National Manufactured Housing Construction and Safety Standards Act also requires that you receive a home owner's manual when you buy your home. This manual will explain,

## BUYING A MANUFACTURED HOME

among other things, what to do if something goes wrong with your home. Some of the important subjects covered in the home owner's manual include:

- general maintenance;
- safety (including a fire safety checklist); and
- state agencies involved in enforcing the federal manufactured home standards.

### THE MANUFACTURER'S WARRANTY

Warranties vary among different manufacturers. Ask to see the warranties on the manufactured homes that interest you and compare them before you buy. All retailers are required to have copies of the manufacturers' warranties that are offered on the homes they sell, and they will make them available to you if you ask to see them. By reading the warranty before you buy your home, you can make sure the home you buy is covered by the kind of warranty protection you want.

When you buy your manufactured home, you will receive the manufacturer's written warranty from your retailer. The manufacturer's written warranty usually covers substantial defects in:

- workmanship in the structure;
- factory-installed plumbing, heating, and electrical systems; and
- factory-installed appliances (these also may be covered by appliance warranties).

It is important, however, to understand that the manufacturer's warranty will not provide coverage for problems resulting from:

- lack of proper installation or maintenance;
- accidents;
- owner's negligence; or
- unauthorized repairs.

## BUYING A MANUFACTURED HOME

Therefore, to make sure that your home's warranty will be honored, carefully follow the manufacturer's instructions for installing, maintaining, and repairing your home.

In many cases, the retailer will perform service under the manufacturer's warranty. However, it is the manufacturer who has the final responsibility. Be aware that if the retailer must order parts from the manufacturer to make a warranty repair, shipping and delivery of those parts may affect the amount of time it takes to get service.

The answers to the following questions should help you get the kind of warranty protection you want:

What warranties come with the manufactured home? You may get warranties from the home manufacturer, the retailer, the transporter, the installer, and the appliance manufacturers.

What exactly does each of these warranties cover? What do they not cover?

Do the manufacturer's or retailer's written warranties on the home cover transportation and installation? If not, are installation and transportation covered by separate written warranties?

How long do the warranties last?

How do you get warranty service?

Who will provide service under the warranties?

Where will the warranty service be performed?

Ask to see all warranties in writing. Make sure you understand who offers the warranty, who performs the service, and what is and is not covered before selecting and buying your manufactured home.

In addition to any written warranty offered by the manufacturer, you may have certain "implied warranties" when you buy a manufactured home. An implied warranty is an unspoken, unwritten promise that a product is fit to be sold and used for its intended purposes--for example, that a manufactured home is fit to be sold and lived in. These implied warranties protect you even if no written warranty is offered by the manufacturer or retailer. Most states allow sales that exclude implied warranties ("as is" sales). However, some states do not permit a seller to exclude or

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limit implied warranties. Contact your state or local consumer protection office to ask about implied warranty protections in your state. When buying a manufactured house, especially a used one, make sure you know whether it is being sold "as is"--with no implied or written warranty.

### THE RETAILER'S WARRANTY

A retailer may offer a written warranty on a home. Written warranties are not alike. But, typically, the retailer's warranty will tell you:

- the terms of the warranty;
- what you must do to keep the warranty in effect;
- what you can reasonably expect from the retailer; and
- that the home has been installed according to the manufacturer's specifications and local regulations.

The warranty also will guarantee that the home has a HUD inspection seal and that optional appliances and equipment have been properly installed. Remember, ask to see the retailer's warranty before buying to check on what it does and does not cover.

You should know that a retailer's warranty will not provide coverage for problems that arise from:

- owner's negligence;
- owner's failure to provide proper notice for service; and
- unauthorized repairs.

### APPLIANCE WARRANTIES

The appliances in your home also will be covered by warranties. In many cases, these warranties, along with use and care manuals, are provided by the individual appliance manufacturers. In addition, some states require that the home manufacturer's warranty cover the appliances that come with your home.

Read the appliance warranties and note the duration and terms. In addition, check instructions in the warranty about how to get service. In most cases, the quickest service can be obtained from the appliance manufacturer's authorized service centers. Check the use and care information on the

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appliance warranties for a list of such service centers or service agents. However, if warranty service is not available from the appliance manufacturer or its servicer, contact your retailer for assistance. The home manufacturer's warranty, if any, may provide warranty service for your problem.

### PLACEMENT AND SELECTION OF YOUR MANUFACTURED HOME

There is a manufactured home to fit almost every pocketbook. Some models are designed for those whose budget limits them to a lower-cost home. Other models have such higher-priced features as cathedral ceilings, formal dining rooms, and woodburning fireplaces. The home can be a single-section unit or a larger multisection unit. Multisection homes come from the factory in two or more parts that are joined at the site. A single-section home comes from the factory as one complete unit. With more than 150 companies building manufactured homes in more than 400 factories, and with manufactured home sales centers located throughout the United States, you have an opportunity to choose from a wide variety of home styles.

### PLACING YOUR MANUFACTURED HOME

Before you select and buy your home, you should decide where it will be located. There are three basic options you can consider. First, you could plan to place your manufactured home on land you own or intend to buy. If you choose this option, you must consider zoning laws, restrictive covenants, and hookup regulations. Such restrictions may prevent you from placing a manufactured home on a particular piece of land. Second, you could plan to place your manufactured home on a leased homesite in a manufactured housing development, in which case the company managing the development will normally take care of these considerations. Third, you could decide to buy a home already on a homesite in a planned community. Then, of course, you would not be faced with the typical placement concerns.

#### PLACING YOUR HOME ON YOUR OWN LAND

If you own or plan to buy land for your manufactured home, there are several matters you should consider.

Zoning. In cities and suburban areas, and in some semirural areas, you may face zoning requirements that must be met. In certain areas, there may be a prohibition against manufactured homes, or certain requirements regarding their size and exterior appearance. You can find out if there are

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any restrictions or requirements by contacting the local community's planning and land use department. Consult your local telephone directory for the office nearest you.

**Restrictive Covenants.** Restrictive covenants are limitations in property deeds that control how you can use the land. These may include a requirement that homes be a certain size or a prohibition that lands not be used for certain purposes. The title search, conducted when you buy the land, may reveal information about such restrictions. Sometimes, however, the restrictions are described in ways that are difficult to understand. You may want to check with an experienced real estate attorney to see if there are any restrictive covenants that would keep you from placing your home on the land you are considering.

**Utilities.** Although a manufactured home comes complete with plumbing, electrical, and heating systems, it must, like all homes, be connected to electrical, water, and sewerage facilities. If your site is a well-developed area, all necessary utilities may be available, subject to connection charges. Find out exactly what utilities are available and how much it will cost to connect your home to all utility sources. Contact your local public utilities division for information about utility services in your area.

**Electrical Facilities.** Electricity is usually available in all areas. But if the area where you plan to live does not have ready access to electric power, connection could be quite expensive. Check with the local power company to find out whether electricity is readily accessible.

**Water Facilities.** In many locations, there may not be local government-supplied water lines. If there is no water, you may have to drill a well. Do not assume that all drilling will provide water. Check with a local well-drilling company about costs and whether success is guaranteed. Also, check with local health authorities to make certain there are no problems with the quality of the water in the area.

**Sewage Facilities.** Many areas still rely on septic tank systems instead of a city or county sanitary sewerage system. If you cannot connect your home to a sewerage system, you must check with local authorities about installing a septic tank. Properly installed septic systems can work quite well. But sometimes they cannot be used; for example, where the soil is not able to absorb the discharged waste. For more information, contact the local health department or the office responsible for granting building permits.

## BUYING A MANUFACTURED HOME

### PLACING YOUR HOME IN A RENTAL COMMUNITY

You may want to place your home on a leased site in a community especially planned for manufactured housing. Placing your home in such a community usually involves fewer practical problems.

If you are interested in a rental community, visit the ones in the area where you wish to live. In addition, some manufactured home retailers may operate their own rental communities, so you may wish to ask the retailer for information and advice about them. Find out what each community offers and the differences among them, including the financial aspects, such as rental and installation costs and any miscellaneous service charges.

There also are several questions you will want to ask before deciding upon a particular rental community.

Is a written lease required and, if so, for how long?

What are the charges for utility connections or other services?

Do the community's rules require that it be responsible for installing your home, or can you let your retailer do the job?

What charges will be made for installation?

Who will be responsible for ground maintenance, snow removal, refuse collection, street maintenance, and mail?

What are the community's rules and regulations? For example, are pets prohibited? Can you accept and live with such rules?

Are there any special requirements or restrictions when you sell your home?

Are there any provisions to protect you if the owner of the manufactured home community where you lease your homesite sells the property for another purpose? If you must move because of a sale, will the owner help with relocation expenses, or is private or public assistance available?

## BUYING A MANUFACTURED HOME

### BUYING A MANUFACTURER HOME IN A PLANNED COMMUNITY

You may want to consider another alternative and buy a home that already is located in a planned community. As with a rental community, there are fewer practical problems involved because you do not have to concern yourself about placement.

But be sure to check into the costs, services, and rules of any planned community before you buy. You should consider matters such as who is responsible for utility connections, if there will be any restrictions on resale of your home, and whether you can live with that community's rules.

### CHOOSING A MANUFACTURED HOME

There are several matters you may want to consider when choosing a home.

How do I want my home to look? You may select from a variety of exterior designs, depending upon your taste and your budget. External siding options come in a variety of colors and materials including metal, vinyl, wood, or hardboard. You also may select such outside design features as a bay window, a gable front, or a pitched roof with shingles. Awnings, enclosures around the crawl space, patio covers, decks, and steps also are available.

What size home and floor plan do I want or need? Manufactured homes are available in a variety of floor plans that include spacious living rooms, dining rooms, fully equipped kitchens, one or more bedrooms, family rooms, and utility rooms. Depending upon your needs and the size of your lot, you can choose a single-section home plan or a larger multisection design. Homes range in size from 400 to 2500 square feet.

Can I move my home to another location or even another state? If there is a chance that you might relocate your home to another state, find out about state laws covering transportation of manufactured homes. Some states, particularly eastern states, have certain regulations, such as weight, size, or width limitations, that may prevent you from moving your home. Before you purchase, check with the appropriate authorities in the states through which you may want to transport your home.

Of course, if you do move your home you will be faced with extra expenses. Besides transporting costs, which include licensing fees to take your home through a state, you

## BUYING A MANUFACTURED HOME

again will have the cost of foundation construction, installation, and utility hookups.

**What interior options and features are available?** Manufactured homes have many options and features for a variety of floor plans. You also can choose color and quality options for carpets and wall coverings; and you can choose other features such as custom cabinets, window designs, and wood-burning fireplaces. Some home models and manufacturers offer more custom options than others. Ask your retailer what options are offered on homes he or she sells.

**What appliance packages are available?** Most manufactured homes are sold with a refrigerator and range. But some appliance packages may include microwave oven, trash compactor, garbage disposal, washer/dryer, and built-in indoor grill. Central air conditioning also is an option.

**What energy-efficiency options are available?** The National Manufactured Home Construction and Safety Standards require separate energy efficiency levels for the three different temperature zones in the United States. There are a variety of optional energy packages available, such as increased insulation, double- and triple-glazed windows, sheathing products, self-storing storm windows, and "high-efficiency" water heaters, furnaces, refrigerators, and air conditioners. Ask your retailer about available energy-saving features and their costs. You especially should note the "heating certificate," which specifies the temperature zone for which the home is designed, and the "comfort cooling certificate," which specifies the appropriate central air conditioning system for the home. Both certificates are located on the inside of the home. You should not place your home in a climate zone for which it was not designed.

**What written warranty coverage is offered on the home, its transportation, and its installation on the homesite?** Nearly all manufacturers offer a written warranty on the home itself. There are, however, important differences among warranties. For example, manufacturers' warranties may exclude coverage of installation and transportation (although reliable retailers or contractors usually offer written warranties on these services). Although you may never need such warranty services, it is a good idea to check the coverage of any warranties that are offered before you buy.

## **BUYING A MANUFACTURED HOME**

### **BUYING A MANUFACTURED HOME**

Most likely you will buy your home from a retail sales center, although today, in some states, you also could buy your manufactured home from a real estate agent if the home is already located in a community. Some retail sales centers are owned and operated by a home manufacturing company, but most retail businesses are independently owned and operated. They sell homes built by several manufacturers.

You should use as much care in choosing your retailer as you do in choosing your home and its features. This is because the retailer will help you choose your home and, if you wish, custom order it from the factory. In addition, the retailer usually will be the one responsible for having your home delivered and installed. The retailer also may arrange for financing and insurance for your home. Finally, after you move into your home, your retailer often will be the person you contact for warranty service.

One of the best ways to find a reputable retailer is to talk with friends who live in manufactured homes and get their recommendations. You also might ask them to recommend a home manufacturer. You may wish to contact your local Better Business Bureau to find out if a particular retailer or manufacturer has a record of unsettled or unresolved complaints on file. You also may wish to contact your state manufactured home association and request the names and addresses of manufacturers or retailers in your area.

### **SITE PREPARATION, TRANSPORTATION & HOME INSTALLATION**

Before your home is installed, you must ensure that the site has been prepared properly. If you are placing your home on your own land, your retailer can provide advice on how to prepare the site.

If you will be living in a rental community, the community manager will probably take care of site preparation. Before signing your lease, ask about this and any other costs.

### **SITE PREPARATION**

If you are having your home installed on your own land, you are responsible for site preparation. However, it is a good idea to ask your retailer (or whoever is going to install

## BUYING A MANUFACTURED HOME

your home and warrant the installation) to inspect the site prior to installation to make sure that everything has been prepared properly.

Here are some guidelines that must be followed in preparing the site.

The site must be accessible by the truck transporting your home.

The site must be as level as possible.

The precise site area must be cleared of trees, rocks, and any other surface debris.

The soil must be graded and sloped for water runoff.

The soil must be compacted so that the foundation will not sink or shift on loose earth fill.

Although you may be able to do some work yourself, such as removing trees and shrubs, most site-preparation tasks, such as grading and compacting the soil, require technical expertise. You will need to contract for expert assistance to ensure that your home is installed on firm land that adequately drains.

## TRANSPORTING YOUR HOME

In most instances, your home will be transported first from the factory to the retail sales center. At the center, your retailer will use a checklist to make sure your home arrived undamaged, and if any problem occurred while your home was being transported from the factory, it will be repaired before delivery to your homesite.

If any damage occurs while the home is being transported to your site, the company transporting your home is usually responsible. Therefore, you should check for damage as soon as your home is delivered. If you find any damage, contact the transporting company immediately.

If you allow your home to be transported by a company that does not provide a written transportation warranty, it may be difficult to obtain free repairs, if any are necessary. Therefore, before you purchase your home, make certain that the transporting of your new home is protected by a written warranty.

## BUYING A MANUFACTURED HOME

### INSTALLING YOUR HOME

After you have chosen the retailer and your home, have complied with local building and zoning requirements, have obtained state inspections when necessary, have properly prepared the site, and have gotten good warranty protection on the home and its transportation and installation, you are ready to have your home installed on a homesite. This also requires careful attention.

Every manufacturer is required by the federal standards to provide instructions for installing your home. However, the actual installation typically is not within the manufacturer's control. Therefore, the installation of your manufactured home is not covered by the manufacturer's warranty.

These cautions are not designed to worry you, but rather to alert you to the importance of installation. Hundreds of thousands of manufactured homes are installed on sites each year without major problems. You should not have problems if your home is installed by a reliable retailer or by a company that specializes in manufactured home installation.

Usually, the retailer will install your home or contact with a professional installation crew to do the work. In most cases, the price of your home will include the cost of installation by such qualified professionals. Be sure to check this with your retailer before you sign the sales contract. If installation is not included in the price, you may have to contract with a separate company to install your home. Ask your retailer for the names of such companies.

The retailer should spell out in writing the full scope of installation services that are included in the price of your home. This should assure you that everything is covered and that there will be no misunderstandings about who is responsible for what.

Regardless of whether the retailer or a separate company installs your home, you should follow several guidelines.

Discuss with the contractor the steps involved in installation so you will understand them.

Have the contractor write these steps into the contract.

Ask if there is a written warranty covering your home's installation. If not, then ask to have it put in writing.

## BUYING A MANUFACTURED HOME

By following these guidelines, you will know exactly what you are paying for, how to check your home to see that the work have been done properly and, equally important, what kind of warranty protection covers each step.

Installing your home involves six steps. The price of your home usually includes all of these steps. Therefore, ask to see an itemized list in writing before signing the contract to purchase your home.

1. **Transporting Your Home From the Retailer's Sales Center to Your Homesite.** As noted earlier, the manufacturer normally is responsible for transporting the home from the factory to the retailer, and the retailer is usually responsible for getting the home to your land. However, if the roads are not adequate or there are obstacles that will make it difficult to get the home to your site, your retailer may be unable to accept responsibility for delivering your home. Be sure to check the route to your homesite for such things as low-hanging tree limbs and loose rocks.

2. **Constructing a Foundation for Home Placement.** In addition to following the manufacturer's instructions and complying with local law, find out if the institution financing your home (or the rental community in which you place your home) has foundation requirements. The Federal Housing Administration (FHA) and Department of Veterans Affairs (VA) also have special foundation requirements. Remind your retailer about the kind of financing you are using so that all applicable foundation requirements will be met.

If you place your home on your own property, you have the option of choosing from a number of different foundation types. Several types of foundations are available, from concrete slabs to full basements. Remember, local codes reflecting the different climates and soil conditions must be followed. A professional installer will know which foundation codes are required by local law or what is required by your financing institution.

3. **Leveling Your Home.** It is essential that an experienced crew installs your home to assure that it is leveled correctly. Leveling is one of the most important steps in setting up your home. It must be done according to the manufacturer's specifications. If your home is not level on its foundation, the weight of the home will not be distributed evenly. Poor leveling could result in such problems as doors that do not open and close easily or floors or walls that buckle.

## BUYING A MANUFACTURED HOME

If any of these problems do occur because your home was not properly leveled, the manufacturer's warranty will not cover the repairs. Remember, the manufacturer's warranty only covers problems resulting from faulty construction. Insist on walking through the home before the installation crew leaves to check for signs that your home may not be level.

After installation has been completed and you have checked out the installed home, it is very important to periodically recheck the leveling of your home. This is important because, over time, such things as foundation supports may settle unevenly and create an unlevel condition. Such conditions can, in extreme cases, cause serious damage to the walls and floors. Normally, you should recheck leveling about 60 to 90 days following installation and, perhaps, once a year after that.

**4. Securing Your Home to the Foundation.** It is not sufficient merely to place your home on a properly constructed foundation. There are certain minimum requirements that should be met. To ensure that your home does not shift and become damaged, it must be anchored to the ground according to the manufacturer's instructions or as required by local codes. Anchoring should prevent severe winds from damaging your home. Although your home will come with instructions for properly securing it to its foundation, anchoring is not a do-it-yourself project. Talk with your retailer about anchoring, and be sure that your home's installation includes this very necessary step.

**5. Finishing Your Home.** Once your home is secured to the foundation, finishing work may be needed, such as an enclosure around the crawl space or landscaping. If your home is a multisection, finishing may include applying molding and joining carpet on the interior or completing work on the exterior siding.

**6. Connecting Your Home to Utilities.** Installation services should include connecting your home to the necessary water, electrical, gas, and sewerage lines. If this is not included in your installation price, you will have to contract for these services yourself. Your retailer can tell you how to make arrangements for utility connections. Alternatively, you can obtain the information from the local government agency that oversees building permits.

This pamphlet outlines the process of site preparation, transportation, and installation. The installation guide that comes with your home provides more detailed information. The

## BUYING A MANUFACTURED HOME

important point to remember, however, is that although this guide is informative and detailed, it is not designed to enable you to install your home yourself. Leave installation to the professionals.

### INSPECTION OF YOUR NEW MANUFACTURED HOME

When you take possession of your new home, the first thing to do is to check it over thoroughly. It is important to discover problems early and report them to the retailer or the installer within the warranty's time limits.

#### INSTALLATION INSPECTION

First, check to see that your home was installed properly. If you are present during installation, ask the installation crew manager to walk through your home with you to assist in identifying problems and to answer your questions.

Listed below are some areas you should check to make sure your home was installed properly.

Open and close all interior and exterior doors. If a door does not open and close smoothly, it may indicate a need for a minor hinge adjustment, but it also may be a sign that the home is not level. Immediately call this to the attention of the person responsible for installation.

Examine the entire house. Look at the walls, the floors, and the ceilings. Be certain that all faucets and appliances work.

#### GENERAL INSPECTION

You will want to make your inspection of the home in an organized way. A good strategy is to inspect the outside of your home first and then check the interior, carefully going through each room. Many manufacturers provide a checklist in the owner's manual of items you should inspect. You should fill out the checklist and return it to the manufacturer as soon as possible.

As you make your inspection, jot down on paper every item you think requires service. When you are finished, make copies of the list--one for you, one for your retailer, and an extra copy for the manufacturer. It is also a good idea to put the date of your inspection on the list.

## BUYING A MANUFACTURED HOME

### YOUR MANUFACTURED HOME SUMMARY

The following is a summary of "How to Buy a Manufactured Home." It provides you with some questions to ask the retailer or yourself before making your purchase.

#### WARRANTY PROTECTION

What warranties are offered by the home manufacturer, the retailer, the transporter, the installer, and the appliance manufacturers?

Are the warranties in writing?

Do you know what is and is not covered by the warranties?

Who performs the services under the warranties?

#### PLACING YOUR HOME

If you intend to place your home on your own land, are there zoning regulations or restrictive covenants that prohibit the location of a manufactured home?

Are electric, gas, water, and sewerage lines available on your homesite, or will you have to make other arrangements to provide necessary utilities?

If you locate your home in a rental community, who will be responsible for ground maintenance, snow removal, and other such services?

#### CHOOSING YOUR HOME

How do you want your home to look?

What size home and floor plan do you want or need?

Will state laws on transporting oversize loads prevent you from moving your home?

What custom options and features are available?

What appliance packages are available?

What energy-efficiency options are available?

## **BUYING A MANUFACTURED HOME**

### **INSTALLING YOUR HOME**

Will someone inspect your site prior to installation to see that everything has been prepared properly?

Is your site accessible by the trucks transporting your home?

Who will transport your home to the homesite?

Does the transporting company provide a written warranty for any damage that occurs during transporting?

What foundation options are available and required?

Will there be an experienced installation crew to ensure that your home is properly leveled and secured to the foundation?

Will your home need any finishing touches, such as landscaping?

Who is responsible for securing utility connections?

### **INSPECTING YOUR HOME**

Have you thoroughly checked over your home, both inside and out?

Do all the doors, windows, and drawers close properly?

Do all appliances and faucets work?

Did you make a list of all problems when you moved in, and did you report them to your retailer and manufacturer?

### **TRANSPORTING MOBILE HOMES AT GOVERNMENT EXPENSE FOR MILITARY PERSONNEL**

Military personnel on permanent change of station orders should contact their local transportation officer to learn the requirements for transporting their mobile homes at government expense.

## BUYING MAJOR APPLIANCES

### PLAN FIRST

The best way to select an appliance is to think about what you need and want from it and write these attributes down. Are you most concerned about reliability and lack of service problems? Or is it more important to you to have an appliance with very low operating costs? Maybe you are worried about size, perhaps needing an appliance to fit an existing space. And then, perhaps you're on a tight budget and must consider price first.

After you've analyzed your needs, you will be better able to select the style, features, size, energy requirements, and price that should be considered in making a buying decision.

You then should gather manufacturers' pamphlets, read ads, visit the library, or talk with several knowledgeable salespeople about the type of product you're considering.

After such study, you will be able to eliminate all but a few brands. At this point, you should do some comparison shopping at several stores to see features demonstrated, to read warranties, to compare prices. Don't buy the first stove or refrigerator you see. Check around first.

### ASK QUESTIONS

You should ask yourself the following questions before making that final decision, in order to save yourself possible consumer problems afterwards:

- . Have you totaled the cost, delivery, installation, and service charges before deciding whether you can afford the appliance?
- . Are you sure it will fit your space?
- . Are you sure you need all the features you're buying?
- . Does the appliance have a reputation for being well-built?

## BUYING MAJOR APPLIANCES

- . Did you choose a dealer with a good service record, one who is well-known in your community as being reliable?
- . Have you read the warranty before buying, and asked questions about any things that are unclear?
- . Did you comparison shop in at least three places before making your final decision?

### FOR MORE HELP

If you need more help or information on consumer problems, contact your nearest Attorney General Consumer Protection Office, or your Legal Assistance Office. If you have a problem that the manufacturer fails to resolve, you may also contact your local Better Business Bureau, or:

Major Appliance Consumer Action Panel (MACAP)  
20 North Wacker Drive  
Chicago, IL 60606  
(313) 984-5858  
(Toll Free) 800-621-0477

## CAR ADS: LOW INTEREST LOANS & OTHER OFFERS

Many new car dealers have been advertising unusually low interest rates and other special promotions such as high trade-in allowances and free or low-cost options. While these advertisements may help you shop, finding the best deal requires careful comparisons.

There are many factors that determine whether a special offer provides genuine savings. The interest rate, for example, is only part of the car dealer's financing package. Other terms, such as the size of the downpayment, also affect the total financing cost. Be sure to consider all aspects of a financing plan before you sign a contract.

When considering an advertised special, read the ad carefully and call or visit the dealer to find out about all the terms and conditions of the offer. Then compare the specials advertised by other dealers.

### QUESTIONS ABOUT LOW INTEREST LOANS

Listed below are some financing questions you should consider when talking to dealers.

\* Will you be charged a higher price for the car to qualify for the low-rate financing? Would the price be lower if you paid cash, or supplied your own financing from your bank or credit union?

\* Does the financing require a larger-than-usual downpayment? Say 25 or 30 percent?

\* Are there limits on the length of the loan? In other words, are you required to repay the loan in a short period of time, say 12 or 24 months?

\* Do you have to buy special or extra merchandise or services such as rust-proofing, an extended warranty, or a service contract to qualify for a low interest loan?

\* Is the financing available for a limited time only? Some merchants limit special deals to a few days or require that you take delivery by a specified date.

\* Does the low rate apply to all cars in stock or only to certain models?

\* Are you required to give the dealer the manufacturer's rebate (if one is offered) to qualify for the low financing?

\* Does the dealer offer any other financing packages that you might consider?

#### QUESTIONS ABUT OTHER SPECIAL PROMOTIONS

Other special promotions include high trade-in allowances and free or low-cost options. Some dealers also promise to sell you a car for a stated amount over the "dealer's invoice." The following questions can help you determine if such special promotions offer genuine value.

\* Does the advertised trade-in allowance apply to all cars, regardless of their condition? Are there any deductions for high mileage, dents, or rust?

\* Does the large trade-in allowance make the cost of the new car higher than it would be without the trade-in? You might be giving back the big trade-in allowance by paying more for your new car.

\* Is the dealer who offers high trade-in allowances and free or low-cost options actually giving you a better price on the car than another dealer who does not offer such promotions?

\* Does the "dealer's invoice" reflect the actual amount that the dealer pays the manufacturer? You can consult consumer or automotive publications for information about what the dealer pays.

\* Does the "dealer's invoice" include the cost of options, such as rust-proofing or waterproofing, that have already been added to your car? Is the dealer charging more for these options than other dealers?

\* Does the dealer have cars in stock without expensive added options? If not, will the dealer order one for you?

\* Are the special offers available if you order a car instead of buying one off the lot?

\* Can you take advantage of all special offers simultaneously?

Remember, you are not limited to financing offered by the dealer. You may wish to see what type of loan you can arrange with your bank or credit union.

Once you decide which dealer offers the car and financing you want, read the invoice and the installment contract carefully. Check to see that all the terms of the contract reflect the agreement you made with the dealer. If they differ, get a written explanation before you sign. Careful shopping will help you decide what financing, car, and options are best for you.

For more information, contact your Legal Assistance Office. This information was furnished by the Office of Consumer and Business Education, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

## CAR REPAIRS

Among the most common and frustrating consumer problems are vehicle repairs. Legal assistance offices receive many complaints about overcharging, poor workmanship, and deception by auto mechanics. The following tips may help you protect yourself when your car or truck needs repair.

### DO YOUR HOMEWORK

Your best protection from fraud and faulty repair work is to find a reputable mechanic or repair shop before your car needs to be repaired.

- \* Ask your friends if they know a reliable mechanic.
- \* After you have selected some repair shops, call the Better Business Bureau, the local consumer protection office (often a branch of the state Attorney General's office), or the legal assistance office and ask if anyone has complained about the shops you are considering.
- \* Ask the shops for some past customers you can contact to see if they were satisfied with the shop's work.

### GET IT IN WRITING

Many states have statutes requiring disclosures by automotive repairers before work is begun. These disclosures include the right to have an estimate when the cost is expected to exceed a certain amount (usually \$50.00 or more). A repairer who fails to return a vehicle when a customer refuses to pay for unauthorized repairs may be liable for damages to the customer.

### IF YOU HAVE PROBLEMS

If you have been overcharged, contact the legal assistance office or the local consumer protection office. Because laws vary from state to state, you should consult the legal assistance office to find out what protections your state's laws afford.

Remember:

- \* Get everything in writing, and keep every piece of paper.
- \* Ask the mechanic for your old parts back. [Some parts, such as alternators and brake shoes, are returned to the parts supplier for a refund, so you may not be able to get them].
- \* Tell the shop manager clearly and calmly that you are dissatisfied. Write down the manager's response.

#### WHAT TO DO

If the shop owner does not resolve the problem to your satisfaction, take your car to another repair shop. Give the mechanic a copy of your itemized receipt and request an inspection of the alleged repairs and parts. Get the report of this inspection in writing. If the same problem recurs, or if you find a new problem that should not have arisen, you will be in a better position to negotiate a refund from the first mechanic if you get a second mechanic's opinion of the work done - in writing.

#### WHAT THE LAW SAYS

Although many states have enacted comprehensive statutes specifically governing auto repairs, many also have unfair or deceptive trade practices statutes that may make it illegal to:

- \* Knowingly make a false or misleading statement about the need for parts or repairs.
- \* Represent that work has been done, or parts replaced, when this isn't true.
- \* Represent that goods are original or new, when in fact they have been previously used or refurbished.

#### TIPS TO REMEMBER

Remember, to avoid problems with auto repairs:

- \* Find a good, reputable mechanic before your car needs repair.

## CAR REPAIRS

- \* Obtain a written estimate before letting the shop do any work. Ask the mechanic to call you before proceeding if the parts or labor will cost more than the estimate.
- \* Try to settle disputes agreeably with the shop owner before taking other action.
- \* If the shop owner does not correct the problem, contact your local consumer protection office, Better Business Bureau (some Bureaus offer mediation services to assist with such problems), or legal assistance office.
- \* Get everything in writing.

TAKE-1

CHILD CUSTODY AND VISITATION

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

1. Q. Do mothers automatically get custody of their children when a separation occurs?

A. The courts of most states do not establish an automatic preference for either mother or father, but they do look very closely at which parent will best promote the welfare and interests of the children of the couple.

2. Q. What kinds of factors do the courts consider in granting custody?

A. They usually look at who has primarily taken care of the child during the marriage (washing, feeding and clothing the child, for example, or helping the child with homework), who has the best approach to discipline, who has cared for the child since separation (if the couple has already separated), what work schedules either or both parents have, and how each parent can provide for the physical, emotional, educational, religious and social needs of the child.

3. Q. Can a legal assistance officer help me get a Court decree for custody?

A. No. You will need to retain a civilian attorney for the preparation of the papers and the appearance in court.

4. Q. Can the court award attorney's fees to me in a custody case?

A. Under many states' laws, if the person asking for attorney's fees is acting in good faith and is unable to afford the legal expenses of the lawsuit, it is possible for the court to award reasonable attorney's fees as part of the custody order.

5. Q. Do I have to file for custody in the state where I am living now?

A. No. While usually a custody suit is filed where the child is presently residing, a person can file an action involving custody of a minor child in the "home state" of the

child (i.e., where the child has lived for the last six months) or in any state where the child and one parent have substantial and significant contacts and connections (such as former neighbors, teachers, doctors, relatives and so on).

6. Q. Can a custody order be changed?

A. No custody order is ever "permanent." However, once a parent is awarded custody in a court order, the judge can change the custody order only if there is a substantial change in circumstances since the time of entry of that prior order. Usually it must be proven that the change has a direct and adverse effect on the children.

7. Q. Will my separation agreement protect me from the other parent snatching my child?

A. No. A separation agreement is only a contract between you and the other parent, not a court order. A court order is enforceable by contempt of court. Court orders of one state can be filed and registered in another state and thus be treated as if they were issued by the second state for purposes of enforcement. None of this applies to separation agreements.

8. Q. If my spouse is granted custody, will I get visitation rights?

A. Ordinarily the noncustodial parent is entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the noncustodial parent has a history of abusing the child. Visitation can be flexible and unstructured, assuming the parties can get along and agree on the times and terms of visitation, or it can be highly structured and rigid, with certain days and times set out with great specificity.

9. Q. Can I register a court order from another state here in this state so that this state can treat it as one of its own decrees for purposes of enforcement?

A. Yes. You may file and register the other state's decree with the Clerk of Superior Court at any county courthouse. You may want to register the decree in the county where you reside or in the county where the other parent lives.

10. Q. If the other parent does not like the present custody order, can he or she file for custody in another state?

A. Under the Uniform Child Custody Jurisdiction Act, which has been passed and made law in almost every state, the court in a custody case must always inquire into whether the child or

children have been the subject of custody litigation in any other state. When a judge finds that another court has made an award of custody, the judge should refuse to rule on the case and refer the parent to the court that originally entered the custody order. Only if that original court no longer has jurisdiction and has released or transferred jurisdiction to the new state court may that court assume jurisdiction to hear the custody case (unless there is an immediate and clear emergency affecting the child's welfare).

11. Q. Won't custody be settled when I obtain a divorce?

A. Divorce decrees do not necessarily settle custody matters, and a custody order can be entered before or after a final decree of divorce in many states.

TAKE-1

**CHILD SUPPORT**

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

1. Q. How much child support should I receive if I'm separated from my spouse?

A. In the absence of a court order or separation agreement, the military expects soldiers to provide an amount at least equal to the Basic Allowance for Quarters at the "with dependents" rate for the support of the soldier's family. This is regardless of whether the soldier is collecting or can collect BAQ at the "with dependents" rate.

2. Q. Can I get a larger amount of support than that?

A. If the two of you are able to reach agreement on a higher sum, that amount should be set out in a separation agreement. If the separation agreement sets out a higher sum, it is that figure that will be binding. If the parties cannot agree, you may petition the court for a court order for support, and whatever the court orders for support will be the required amount for the soldier to pay.

3. Q. Can a military lawyer prepare a separation agreement or petition the court for me?

A. It depends on the legal office at your installation. If the office does not prepare separation agreements, a legal assistance attorney can help you obtain a civilian lawyer. A civilian attorney can help you with a separation agreement and represent you in court. The county Child Support Enforcement Office can also help you establish or enforce child support.

4. Q. If my spouse fails to pay child support, whom should I contact?

A. Contact the soldier's commanding officer or a legal assistance attorney. If the soldier is bound by court order or separation agreement to pay a certain amount, you may ask the court to enforce the order (by contempt of court) or the agreement (by breach of contract). A person found in contempt of court may be ordered to comply with the prior court order or else be confined in jail for a period of time. Failure to obey a child support order can lead to other penalties, as well, such as seizure of assets (a bank account or a car, for example) or

assignment of wages. Additionally, under the federal Fair Credit Reporting Act, delinquent child support payments reported to a credit reporting agency and verified by the state child support enforcement agency will be entered on the soldier's credit report.

5. Q. How do I know how much child support I need?

A. States have adopted child support guidelines which should be consulted. In general, a parent's support obligation is set by a schedule based on the gross income (pay before taxes) of the noncustodial parent and the number of children requiring support. Usually, the court considers "gross income" to be the same as "total entitlements" on a soldier's Leave and Earnings Statement (LES), meaning base pay plus BAQ, separate rations, jump pay and any other items paid to the soldier.

6. Q. What if I need more child support?

A. The guidelines are flexible and allow for a child's special needs, extremely high or low income and other factors the court finds to be just and proper. Make a list of all monthly expenses for your household and apportion the expenses between yourself and the child or children. You should set aside a certain portion of the rent, utilities and food for each child, and you should also consider whether you should apportion such expenses as car payments, gasoline and medical bills for the child. You must support the child or children and you are the one who best knows the facts, needs and expenses. The judge can go outside the guidelines, but you must prove the need for such a variance.

7. Q. When my child is visiting the other parent, can he or she reduce the child support paid to me?

A. No. Unless the court order or separation agreement specifically provides for a reduction, the child support payment should remain the same.

8. Q. If I cannot see my child for visitation, can I stop paying child support?

A. Under most states' laws, denial of visitation is not legal justification for withholding child support. Neither is lack of child support a legal excuse for refusing the other parent visitation rights.

9. Q. When does child support stop?

A. Child support, without an agreement or court order, usually ends at the child's eighteenth birthday, although the judge can extend it until the child's high school graduation, so long as the child is not over twenty years old. A separation agreement or court order by consent may set a higher age, such as

upon graduation from college or at age twenty-one.

10. Q. Can the other parent's paycheck be garnished for child support?

A. Yes. Under North Carolina law, for example, garnishment of a paycheck for child support may be ordered for up to forty per cent (40%) of the net available pay. This includes military pay as well. Other states will vary in garnishment requirements and procedures, and some states do not allow garnishment at all. Garnishment is a court proceeding that requires a civilian lawyer. Garnishment is allowed only if a court order for child support is violated; it does not apply if there is only a separation agreement.

11. Q. Can the military withhold money from a soldier's paycheck without garnishment?

A. Yes. If the soldier is behind in court-ordered payments in an amount equal to at least two months of child support, the military service can withhold child support from the soldier's pay by Involuntary Allotment. The pay center must be furnished with a written certification as to the arrears by an official such as a clerk of court, a judge or a social services worker.

12. Q. What if I need more child support in the future?

A. If the child support is set out in a court order, you may petition the court to increase child support if you can show that there has been a substantial change of circumstances since the date the order was signed. Such a change usually consists of increased living expenses, inflation and an increase in the earnings of the other parent. Sometime the parents can agree between themselves on an increase in child support. If they wish, they can enter into an agreement that adjusts child support annually on the basis of, say, the Consumer Price Index or the wage increases of the noncustodial parent. When the parents cannot agree, the court must resolve the matter and the custodial parent must prove that present child support is inadequate.

13. Q. Can child support also be reduced?

A. Yes. The court has the power to modify child support upwards or downwards, so long as there has been a substantial change of circumstances since the entry of the original order. Thus, for example, a parent who just lost his job or has had a substantial reduction in pay could petition the court to reduce child support payments that he or she is making.

14. Q. Can child support be paid through the court?

A. Yes. If the court order says so, the child support may be made payable through the clerk of court. Payment to the clerk is a preferred method. This allows the parents to be sure that payments are properly recorded and avoids problems of payments made in cash directly to the custodial parent with no receipt given. If child support is paid through the clerk's office, the clerk will also help enforce the order through contempt of court proceedings if the payor is in arrears. This is done at no cost to the recipient/payee.

15. Q. Are there any other aspects of child support in addition to the money paid every month?

A. Yes. Such matters as medical expenses, tax exemptions and college are also important parts of child support. Consult a legal assistance attorney.

16. Q. What if I have other questions?

A. Please set up an appointment to see one of our legal assistance attorneys. They are here to help you.

TAKE-1

INVOLUNTARY CHILD SUPPORT/ALIMONY

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

1. Q. I am owed alimony and child support by a soldier and I have a court order of support. How do I legally begin to collect it?

A. There are two methods of collecting unpaid child support or alimony. They are garnishment proceedings and involuntary allotments.

GARNISHMENT

2. Q. What is garnishment?

A. Garnishment is a statutory proceeding whereby a person's property or money (usually a bank account or paycheck) are taken and applied to the payment of the former's debt. The normal situation involves the soldier's pay check at the applicable military service Finance and Accounting Center.

3. Q. What types of pay can be garnished?

A. All pay after taxes is garnishable. Such pay includes basic pay, hazardous duty pay, severance pay, sick pay, cash awards, pensions, retirement, etc. However, allowances such as BAQ, BAS and Family Separation Allowances cannot be garnished.

4. Q. What is garnishment used to enforce?

A. Garnishment is used to enforce a soldier's obligation to pay child support and/or alimony.

5. Q. Can I use garnishment proceedings in all states?

A. No. All states do not allow garnishment of pay or property to enforce a soldier's obligation to pay alimony and/or child support. You must look to the appropriate state laws.

6. Q. How do I initiate a garnishment proceeding for child support?

A. Use North Carolina as an example. To initiate a garnishment proceeding, you must first have a court order requiring the soldier to pay child support. Secondly, you must hire a

civilian attorney to obtain a garnishment order from the local court. Once the garnishment order is obtained from the local court it must be served on the designated agent of the governmental agency which has moneys due and payable to the individual who owes child support. The order should name the governmental agency as the garnishee. For soldiers, the governmental agency is the Army Finance and Accounting Center.

7. Q. Will I need more information to ensure processing by the governmental agency?

A. Yes. Sufficient identifying information must accompany the legal papers. The following identifying information about the individual owing child support (obligor) is requested if known: Full name, date of birth, Social Security number, component of the governmental entity for which the soldier works and the official duty station or worksite, and status of the obligor.

8. Q. If the information is not sufficient to identify the obligor, what happens?

A. If the information is not sufficient to identify the obligor, the legal papers will be returned directly to the court or other authority with an explanation for the return.

9. Q. If I request garnishment of an individual's pay, how much of his/her pay may I garnish?

A. There are state and federal limitations on the amount of pay that can be garnished. Unless a lower maximum garnishment limitation is provided by state law, the maximum amount subject to garnishment will not exceed 50 percent of the disposable pay if the soldier is remarried and supporting a spouse and/or dependent child; or 60 percent if the soldier is single. An additional 5 per cent will apply to each maximum limit if the order contains evidence that the soldier is 12 weeks in arrears.

10. Q. If my pay is garnished, how can I stop the garnishment?

A. The only way a soldier can stop the garnishment is to go to the court that issued it and have it removed or reduced.

#### INVOLUNTARY ALLOTMENT

11. Q. Can the Army withhold money from a soldier's pay check without garnishment?

A. Yes. The process is called Involuntary Allotment.

12. Q. When can Involuntary Allotment be used?

A. Involuntary Allotment is a procedure that can be initiated when the soldier is behind in court-ordered payments (alimony or child support) in an amount equal to at least two months of child support and/or alimony. These payments must have been made payable through a state official, and normally they are payable through the Clerk of Court.

13. Q. How can I request initiation of an Involuntary Allotment?

A. To initiate an allotment, the applicable military Finance and Accounting Center must receive notice from an authorized person, agent or court that the soldier is two months behind in the support payments and a certified copy of the court order.

14. Q. Who is authorized to give notice?

A. Notice can be given by a state-authorized child support center, department of social services or the court.

15. Q. How should notice be given?

A. Notice should be given in the form of a court order, letter, statement, certificate or other document issued by an authorized person.

16. Q. What happens when the notice and court order are filed with the Finance Center?

A. The Finance Center must provide notice to the soldier and the soldier's commander. The commander sends the soldier to a Judge Advocate for consultation to discuss the legal and other factors involved with respect to the soldier's support obligation and the failure to make payments under the obligation.

17. Q. After the soldier has had a chance to consult with a Judge Advocate, will the allotment take effect?

A. Yes. As soon as the commander notifies the Finance Center of the counseling, the allotment takes effect.

18. Q. This seems as though it could take months to complete. Am I protected from such delay?

A. Yes. The allotment will take effect when 30 days have elapsed after notice is given to the affected soldier regardless of whether there has been a consultation with a Judge Advocate.

19. Q. What is the maximum amount of the allotment?

A. The amount of the allotment shall be the amount necessary to comply with the order. If the order so provides, the amount may include arrearages as well as the amounts for current support. However, it shall not exceed 60% of the soldier's salary unless the soldier is more than 3 months behind, which in that case it can be 65%.

20. Q. Can the allotment be adjusted or discontinued?

A. Yes. An allotment can be adjusted or discontinued only upon notice from the authorized state official and not by the soldier.

## CONTEST CONS

**CONGRATULATIONS--IT'S YOUR LUCKY DAY !** You have won one of the following FABULOUS prizes: a diamond pendant; a deluxe vacation for two; a food processor; a stereo system; or a 6 foot grandfather clock.

If you receive a letter like this, you should be skeptical about the value of your "fabulous" winnings. The prize you win may not be worth the effort to collect it.

What could be wrong with these prizes? You need to see them to understand. The diamond is probably the size of a pin-head. The vacation for two might include only discount coupons for inexpensive lodging, leaving you with the cost of transportation and food. The food processor might be more accurately described as a hand-operated food chopper. The stereo system might be cheap plastic that fits in your hand; and the clock may turn out to be made of cardboard and plastic.

These deceptively-described prizes are sometimes used as an inducement to attract customers to sales meetings for land, or for vacation "timesharing" (the use of a vacation home for a limited, pre-planned time). Because these prizes are frequently cheap imitations of luxury items, the promoters who use them call them "switchers."

The Federal Trade Commission and local consumer protection officials have been receiving a growing number of complaints about promotions that use deceptively-advertised prizes. Many consumers are also upset about the high-pressure sales tactics used during sales meetings. Some of those who sign contracts wonder if they can cancel their agreement to buy.

Once you sign a contract, it is often difficult to cancel it without losing some money. That is why you should consider any purchase carefully before you sign. And next time you get a computerized "personal" letter telling you it is "your lucky day," keep these points in mind:

1. Do not be deceived by letters that look official or urgent. Some contest promoters use names that resemble official organizations, such as a state lottery or parcel delivery service, or an envelope that looks as if it contains an important telegram.

2. Read the letter carefully. In some cases, the

CONTEST CONS

letter may tell you the cash value of each prize or that you must attend a sales seminar as part of the contest. The fine print may be especially informative.

3. Think carefully before you attend the sales meeting for the sole purpose of winning an expensive prize. Your chances of winning a truly valuable prize are likely to be very slim. If you are interested in finding out about whatever is being promoted, however, you may want to attend.

4. If you attend a sales meeting, do not sign a contract or give the salesperson a deposit right away. Ask for a few days to consider your decision. During that time, get additional information. Call your state or local consumer protection office to inquire about the seller's reputation. Be wary of offers that purport to be for a "limited time" only and efforts to make you buy "on the spot." Although some state laws provide cancellation periods, you should not count on being able to cancel and get your money back unless your right to do so is clearly spelled out in your contract.

5. Before signing, make sure you read the contract carefully. If the salesperson makes claims that are not in the contract, remember it is the contract that counts.

For more information, see your Legal Assistance Office.

## COSIGNING A LOAN

What would you do if a friend or relative asked you to cosign a loan? It is easy enough to say yes. But your signature means a lot more than a "vote of confidence" in a friend or relative. Cosigning is serious business.

### Cosigners Often Pay

Some studies show that three out of four cosigners of finance company loans are asked to repay the loan. That should not surprise you. When you are asked to cosign, you are being asked to take a risk that a professional lender will not take. Think about it. The lender would not need a cosigner if the borrower were a good risk.

If you do cosign and your friend or relative misses a payment, the lender can collect from you right away without pursuing the borrower first. And the amount you owe may be increased--by late charges or by legal fees - if the lender decides to sue to collect. If the lender wins the case, he or she may be able to take your wages and property.

Do not be pressured into cosigning. Consider your decision carefully--cosigning may not be a good idea.

### If You Do Cosign

Despite these risks, there may be times when you want to cosign. Perhaps your son or daughter needs a first loan, or a close friend is facing repossession, court action, or otherwise needs help. Here are a few things to consider before you cosign:

1. Be sure you can afford to pay the loan. If you are asked to pay and cannot, you could be sued or your credit record could be damaged.
2. Consider carefully before you pledge your property, automobile, or furniture to secure the loan. If the borrower defaults, you could lose these possessions.
3. Ask the lender to establish the specific amount of money that you might owe. The lender does not have to do this, but some will if asked. You may also be able to negotiate the specific terms of your debt. For example, you may agree to pay the principal balance on the loan, but not late charges, court costs, or attorney's fees. In this case, ask the lender to include

## COSIGNING A LOAN

a statement in the contract like this: "The cosigner will be responsible only for the principal balance on this loan at the time of default."

4. Ask the lender to agree, in writing, to notify you if the borrower misses a payment. Notification should come before a late charge is added, or before the loan is "accelerated" (when the whole loan must be repaid at once). This way you will have time to deal with the problem or make back payments without having to repay the whole amount.

5. Make sure you get copies of all important papers signed by the borrower: the loan contract; the Truth-in-Lending Disclosure Statement; and any warranties for products purchased if it is a credit sale. You may need these if there is a dispute between the borrower and the seller.

### Notice to Cosigners

As of March 1, 1985, the Federal Trade Commission requires that all cosigners be given the following notice:

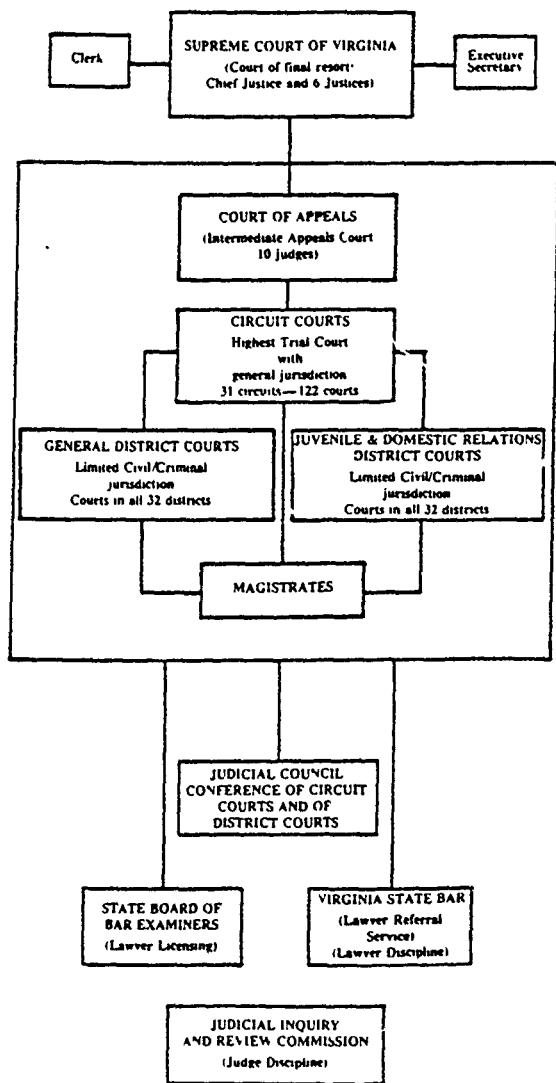
You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, the fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

## The Virginia Judicial System



1/87 (A002101 9/89)

# Virginia



Information Pamphlet

General  
District  
Courts

# TO UNDERSTAND YOUR VISIT TO COURT YOU SHOULD KNOW:

It is the court's wish that you know your rights and duties. We want every person who comes here to receive fair treatment in accord with the ideals of American justice.

By law, the court must apply rules of procedure and evidence to each case it hears. These procedures are applied uniformly, without regard to personal considerations. The judge is sworn to enforce without favor the laws of the State and community, which are made by the people for the protection of all.

The General District Court does not conduct jury trials. All cases in this court are heard by a judge. Jury trials are held only in Circuit Court, as provided by the State Constitution.

The Code of Virginia defines criminal offenses and sets penalties. For many offenses the penalty prescribed is a fine. Fines collected for violations of city, town, or county ordinances are paid into the treasury of the city, town, or county whose ordinance has been violated. All fines collected for violation of State law are paid into the State Treasury. The amount of court costs is set by the State legislature, and the court cannot suspend or waive costs. Judges, clerks, and magistrates are salaried with public funds and they collect no individual fees. The court is not operated to produce revenue.

## Why Are You In Court?

- You are appearing in court for one of the following reasons.
- You are a plaintiff because you filed a civil suit, or
  - You are a complainant because you have caused criminal charges to be brought against someone, or
  - You are a defendant because someone is suing you, or you have been charged with a traffic violation or a criminal offense, or
  - You are a witness who has been called to testify.

## Your Rights In Court

You have the right to retain and be represented by your own lawyer in all matters before the court. However, you may waive representation by counsel and represent yourself.

If you are charged with a crime for which the penalty includes the possibility of a jail sentence, and you state that you are indigent and cannot afford a lawyer, the judge will examine your financial status. Based on results of the examination, and your financial statement under oath that you cannot afford an attorney, the judge may assign an attorney to represent you, in which event the cost of such attorney may be incorporated as court costs, if you are found guilty. If you are the complainant in a criminal proceeding, the Commonwealth's Attorney, who represents the State, will prosecute the case. You have the right to have the clerk's office subpoena witnesses to appear on your behalf in court. You may ask for a

continuance if you have good cause to have your case put off until a later date, though the judge does not have to grant your request.

## Types of Cases General District Court

**Civil Cases.** The General District Court decides civil suits involving amounts of money up to \$7,000. A suit is begun by filing a civil warrant or motion for judgment with the clerk of the court and paying a fee.

**Criminal Cases.** The General District Court decides cases in which a person is charged with a misdemeanor. A misdemeanor is any charge which carries a penalty of no more than one year in jail or a fine of up to \$1,000 or both.

The General District Court holds preliminary hearings in felony cases. Any charge which may be punishable by more than one year in jail is called a felony. Preliminary hearings in felony cases are held to determine whether there is enough evidence to justify holding the defendant for a grand jury hearing. The grand jury determines whether the accused will be indicted and held for trial by the Circuit Court.

Each defendant in a criminal case is presumed innocent until proven guilty beyond a reasonable doubt. Upon consideration of evidence, the judge decides the question of guilt or innocence and on a finding of guilt determines which penalty, if any, is proper and lawful.

**Traffic Cases.** The General District Court hears cases in which a person is charged with a traffic offense. Most traffic offenses are traffic infractions. (Cases involving awards to individuals for damage in connection with traffic violations are civil in nature.) If you are convicted of certain traffic violations the Virginia Division of Motor Vehicles will assess points against your driver's license. This is an administrative action by DMV and is in addition to any sentence imposed by the judge.

## Procedure In Criminal And Traffic Cases

If you are a defendant:

- When your name is called, come forward with your lawyer, if you have one, and witnesses and stand before the bench.
- The charge will be read. If you do not understand the charge, ask the judge to repeat or explain.
- If you are asking for a continuance (postponement), do so now, and give your reason.
- You answer the charge by saying *guilty* or *not guilty*. If in doubt, you should plead *not guilty*. When you plead *guilty*, you admit that you broke the law as you were charged, and are agreeing to accept any penalty set by law and imposed.

If your plea is guilty:

- The judge may hear a brief statement from the officer, prosecutor or individual who brought the charge against you.
- Then the judge may ask you if you wish to make a statement.

You may then say whatever you wish about what happened.

- The judge will find you guilty or not guilty and may sentence you.

If your plea is not guilty:

- The witnesses who bring evidence against you will be heard first. You or your attorney may cross-examine each witness.
- You may present witnesses on your behalf, but you do not have to testify yourself, unless you want to do so, when you are accused of a criminal charge.
- After your evidence is presented, witnesses against you may be heard again in rebuttal testimony.
- Then the judge will give his decision.

If you are found NOT guilty or, if the judge dismisses the case against you, or if the judge grants a motion not to prosecute, you are free to go.

If you are found guilty, you must satisfy the sentence by:

- Paying fines and court costs in full to the clerk of the court if so ordered.
- Surrendering your driver's license to the clerk if so ordered by the judge.
- Serving time in jail if so ordered by the judge.
- Comply with alternative sentence as ordered by the judge.

## Failure To Appear

In criminal and certain traffic cases, if you fail to pre-pay the fine and costs (when allowed) and also fail to appear in court, a separate warrant may be issued against you on the new charge of failure to appear. You then will have to stand trial on that charge, as well as the original charge.

## In Civil Cases

Very often a citizen has a valid claim which can be satisfied only by a legal proceeding but which may be too small in value to justify hiring a lawyer. The majority of these claims will be for less than \$1,000. In Virginia, claims of this amount can be initiated only in General District Courts. Although these district courts can determine larger claims up to \$7,000 the important thing to remember is that they are the only courts in Virginia where suits may be filed for claims of \$1,000 or less. One procedural possibility should be noted: if the amount involved is greater than \$1,000 and the defendant files an affidavit with the court indicating a substantial ground of defense, and if he also pays the accrued court costs, the judge will remove the action to a court of record, which is called a Circuit Court.

## Where Can A Civil Suit Be Brought?

To get the person you want to sue (the defendant) into court, you must bring suit in one of the places authorized by law. The simplest rule is that you may bring suit in the city or county where the

defendant lives, is regularly employed, or has a regular place of business.

You may also bring suit in the city or county where your cause of action arose (where the act on which your claim is based took place). If the defendant is a non-resident of Virginia, you may bring suit wherever the defendant can be found, or owns property within the state.

If you wish to sue a corporation, you may do so in the city or county in which either its principal office or registered agent is located. This information may be obtained from the State Corporation Commission located in Richmond, telephone 804/786-3733. A foreign corporation (one not originally incorporated in the State of Virginia) can be sued in the location where the statutory agent resides, or its registered office is situated, or, in case of withdrawal from the State, where its last statutory agent resided, or office was situated, or where it has any estate or debts owing to it within Virginia.

## How Long Do You Have To Bring Your Suit?

You cannot wait forever to bring your suit. The time you do have is determined by law depending on the nature of your claim. You must bring your action within the period known as a statute of limitations. While you may have 3 years to bring a claim on a contract, you should initiate your action as soon as possible. Your action has been legally commenced when the necessary information has been filed with the officer who is going to issue your warrant and the required fee paid. This commencement will become void, however, if the warrant is not subsequently served upon the defendant and properly returned to the court.

## How To Start Your Suit

You may bring your suit in a District Court by either a warrant or the traditional motion for judgment. The warrant is by far the simpler procedure. You simply go to either the clerk of the court, or to a magistrate, with the information about your case.

Basically this information consists of your name and address, the name and address of the person, business, or corporation you are suing, the amount of your claim, and the reason for your suit. You should note that the name of the person you are suing must be correct. With regard to obtaining the correct name of a business or corporation, you can obtain assistance from such sources as the Better Business Bureau, local Chamber of Commerce, and the State Corporation Commission.

If a subpoena is necessary in order to insure the presence of your witnesses, you should ask the clerk of the court, at least a week or ten days in advance of the hearing day, for the subpoena. If you are a defendant and fail to answer a civil warrant, or fail to appear in court, a judgment may be granted against you by default. If you are a plaintiff, you should check with the clerk of the court to determine if your appearance is necessary.

## How Do I Get My Money?

If your claim is against an established business, and you obtain a judgment against it, its owner will usually honor that judgment as a matter of course. In many cases, however, the person you have obtained judgment against will not pay you.

If he has no assets, your judgment may be worthless, but if he does have assets, you can "execute" against him through further legal proceedings. You may request the clerk or the judge to issue a writ of *fieri facias* to collect your judgment. This writ creates a "lien" (or claim) on the defendant's personal property. To satisfy your claim out of this personal property, you may then ask the sheriff to "levy" on particular items of which you notify the sheriff, or on all the property. You will be required to post a bond with the sheriff to enable him to seize and sell the property and pay to you the proceeds of the sale.

The writ of *fieri facias* also creates a lien on property not subject to levy, i.e., wages or other debts owed to the defendant. You can execute this lien by garnishment of wages or debts subject to the limits of Virginia law.

Another alternative open to you if you have obtained judgment and are not paid is to request that an abstract of judgment be filed against this person in the clerk's office of the Circuit Court. This creates a "lien" against any real property the person owns in that locality.

## Appeals To The Circuit Court

If you wish to appeal your case to the Circuit Court, you must file a notice of appeal with the clerk of the General District Court within 10 days after the judgment or conviction by the General District Court.

In criminal and traffic cases, whatever the plea and sentences, you may appeal to the Circuit Court. You will get a jury trial unless affirmatively waived in the Circuit Court.

Civil cases involving amounts of more than \$50 may be appealed to the Circuit Court, where you may ask for a jury trial. If you do not ask for a jury trial, the appeal will be heard by a Circuit Court judge. See the clerk of the General District Court about cost and bond requirements.

## Legal Advice

If you wish to hire your own attorney or obtain legal advice but do not know an attorney, you can obtain the name and telephone number of a local attorney from the Virginia State Bar Lawyer Referral Service by calling the following Toll-Free number: 800-552-7977.

Court employees will try to assist you, but they are not attorneys and cannot give legal advice.

## Other Trial Courts

Juvenile and Domestic Relations District Court handles criminal

and traffic violations by juveniles and serious internal family relations problems. Other sections of the court enforce the judges' orders including probation and child support, and assist in finding temporary homes for children under court supervision.

Circuit Court has exclusive jurisdiction over criminal felonies and civil cases involving more than \$7,000, shares jurisdiction with the General District Court in civil cases involving between \$1,000 and \$7,000 and hears civil, criminal, and traffic cases appealed from lower courts.

## Your Rights And Duties As A Victim

As a victim of a crime in Virginia, you have certain legal rights and also certain obligations as a witness against the accused.

As a witness to a crime, you must cooperate fully with Commonwealth Attorney's office and testify in court if requested.

As a victim you may seek compensation (payment) from the accused for your property and personal injury losses. You should seek the aid of your lawyer if you want to do this.

Also you may qualify for compensation under the Virginia Crime Victims Compensation Act. To qualify for compensation under this act, you must show that a crime was committed which resulted in injury to you, and that you in no way contributed to this crime. You must also show that you reported the crime to the police not more than 48 hours after it happened, and cooperated fully with the police in their investigation of the crime. In addition, to qualify for compensation, you must show that your injury or loss caused you more than normal financial hardship making it impossible to keep your usual standard of living. You cannot receive compensation under this act if you have already been reimbursed (paid) by any other source such as insurance.

To apply for compensation under the act, or for more information, you should contact the Division of Crime Victims Compensation Industrial Commission of Virginia, P.O. Box 1794, Richmond, Virginia 23214, Telephone (804) 786-5171.

## CREDIT CARD THEFT AND FRAUD

The cost of credit and charge card fraud--to card holders and to card companies alike--may be as high as \$500 million a year. Everyone pays for credit and charge card fraud in higher prices, whether or not they are personally defrauded.

While theft is the most obvious form of credit and charge card fraud, it is not the only way fraud occurs. A more subtle form of fraud is "misappropriation"--the use of your card number (not the card itself) without your permission. Misappropriation may occur in a variety of ways:

- \* A phone caller says that you need only provide your card number and its expiration date to qualify for a special discount vacation.
- \* A thief rifles through trash to find discarded receipts or carbons to use the card numbers illegally.
- \* A dishonest clerk makes an extra imprint from your credit or charge card for his or her personal use.

### How to Guard Against Credit and Charge Card Fraud

Here are some suggested precautions you can take to help protect yourself against credit and charge card fraud. You may also want to instruct any other person who is authorized to use your account to take these same precautions.

- \* Sign your new cards as soon as they arrive.
- \* Carry your cards separately from your wallet. Keep a record of your card numbers, their expiration dates, and the phone number and address of each company in a secure place.
- \* Keep your card in view, whenever you can, after you give it to a clerk. Retrieve your card promptly after using it.
- \* Avoid signing a blank receipt, whenever possible. Draw a line through blank spaces above the total when you sign card receipts.
- \* Void or destroy all carbons and incorrect receipts.
- \* Save your card receipts to compare with your billing statements.

## CREDIT CARD THEFT AND FRAUD

- \* Open billing statements promptly and reconcile your card accounts each month, just as you would your checking account.
- \* Report promptly and in writing any questionable charges to the card issuer.
- \* Notify card companies in advance of a change of address.

In addition, here are some things you should not do:

- \* Never lend your card(s) to anyone.
- \* Never leave your cards or receipts lying around.
- \* Never put your card number on a postcard or on the outside of an envelope.
- \* Never give your number over the phone unless you are initiating a transaction with a company you know is reputable. If you have questions about a company, check with your local Consumer Protection Office or Better Business Bureau before ordering.

### What To Do If Your Cards Are Lost or Stolen

If your credit or charge cards are lost or stolen, call the issuer(s) immediately. Most card companies have a toll-free number for reporting missing cards. Some companies provide 24-hour service. By law, once you report the loss or theft, you have no further liability for unauthorized charges. In any event, your maximum liability under federal law is \$50.

### What To Do About Suspected Fraud or Billing Problems

If you suspect that someone has illegally used your account number, send the card issuer a letter that includes your name, account number(s), and the charges that you question with your reasons. You must direct your letter to the "billing error address" provided on your statement, and it must reach the creditor within 60 days after the first bill containing the error was mailed to you. If you send your letter by certified mail, with a return receipt requested, you will have proof that the letter was received.

## CREDIT CARD THEFT AND FRAUD

If you decide to call the card issuer for faster action, use the special numbers that many card issuers list on their billing statements, but follow up your phone call with a letter. Only a letter protects your rights under the Fair Credit Billing Act.

The card issuer must acknowledge receipt of your letter or correct the error within 30 days. Or, they must investigate and either correct the mistake or justify the charges within two billing cycles or 90 days, whichever is less. You may be asked to sign a statement under oath that you did not make the purchase(s) in question.

For more information about your credit rights, contact your Legal Assistance Office or the Federal Trade Commission. You can write to the Federal Trade Commission, Washington, DC 20580 for these free publications: Credit Billing Blues; Credit Billing; and Fair Credit Reporting.

## **DEBT COLLECTION**

If you use credit cards, owe money on a loan, or are paying off a home mortgage, you are a "debtor." Most Americans are.

You may never come in contact with a debt collector. But if you do, you should know that there is a law to make sure you are treated fairly. The Fair Debt Collection Practices Act was passed by Congress in 1978 to prohibit certain methods of debt collection. Of course, the law does not erase any legitimate debt you owe.

Here are some answers to some questions you may have about your rights under the Fair Debt Collection Practices Act:

### **What debts are covered?**

Personal, family, and household debts are covered under the Act. This includes money owed for the purchase of a car, for medical care, or for charge accounts.

### **Who is a debt collector?**

A debt collector is anyone, other than the creditor or the creditor's attorney, who regularly collects debts for others.

### **How may a debt collector contact you?**

A debt collector may contact you in person, by mail, telephone, or telegram. However, a debt collector may not contact you at inconvenient or unusual times or places, such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector may not contact you at work if your employer disapproves. (The military services consider military supervisors or commanders to be "employers." Thus, a debt collector who contacts you at your installation office or worksite, where your commander or supervisor prohibits it, is in violation of the law).

### **Can you stop a debt collector from contacting you?**

You may stop a debt collector from contacting you by writing a letter to the collection agency telling them to stop. Once they receive this letter, they may not contact you again except to say there will be no further contact. The debt collector is allowed to notify you that some specific action may be taken, but only if the debt collector or the creditor usually takes such action.

## DEBT COLLECTION

**May a debt collector contact any other person concerning your debt?**

If you have an attorney, like a Legal Assistance attorney, the collector may not contact anyone but the attorney. If you do not have an attorney, a debt collector may contact other people, but only to find out where you live or work. The collector is not allowed to tell anyone other than you or your attorney that you owe money. In most cases, collectors are prohibited from contacting any person more than once.

**What is the debt collector required to tell you about the debt?**

Within 5 days after you are first contacted, the debt collector must send you a written notice telling you the amount of money you owe; the name of the creditor to whom you owe the money; and what to do if you feel you do not owe the money.

**If you believe you do not owe the money, may a debt collector continue to contact you?**

The debt collector may not contact you if you send the collector a letter within thirty days after you are first contacted saying you do not owe the money. However, a debt collector can begin collection activities again if you are sent proof of the debt, such as a copy of the bill.

**What types of debt collection practices are prohibited?**

**Harassment.** Debt collectors may not harass, oppress or abuse any person. For example, debt collectors may not:

- \* Use threats of violence or harm to property or reputation.
- \* Publish a list of consumers who refuse to pay their debts (except to a credit bureau).
- \* Use obscene or profane language.
- \* Repeatedly use the telephone to annoy someone.
- \* Telephone people without identifying themselves.
- \* Advertise your debts.

## DEBT COLLECTION

**False Statements.** Debt collectors may not use any false statements when collecting a debt. For example, debt collectors may not:

- \* Falsely imply that they are an attorney or government representative.
- \* Falsely imply that you have committed a crime.
- \* Falsely represent that they operate or work for a credit bureau.
- \* Misrepresent the amount of the debt.
- \* Indicate that papers being sent are legal forms when they are not.
- \* Indicate that papers being sent are not legal forms when they are.

Also, debt collectors may not say that:

- \* You'll be arrested if you do not pay your debt.
- \* They will seize, garnish, attach, or sell your property or wages, unless the collection agency or the creditor intends to do so, and it is legal.
- \* Actions will be taken against you which legally may not be taken.

Debt collectors may not:

- \* Give false credit information about you to anyone.
- \* Send you anything that looks like an official document which might be sent by any court or agency of the United States or any state or local government.
- \* Use any false name.

**Unfair Practices.** Debt collectors may not engage in unfair practices in attempting to collect a debt. For example, debt collectors may not:

- \* Collect any amount greater than your debt, unless allowed by law.
- \* Deposit a post-dated check before the date

## DEBT COLLECTION

on the check.

- \* Make you accept collect calls or pay for telegrams.
- \* Take or threaten to take your property unless this can be done legally.
- \* Contact you by postcard.
- \* Put anything on an envelope other than the debt collector's address and name. Even the name can't be used if it shows that the communication is about the collection of a debt.

What control do you have over specific debts?

If you owe several debts, any payment you make must be applied to the debt you choose. A debt collector may not apply a payment to any debt you feel you do not owe.

What can you do if the debt collector breaks the law?

You have the right to sue a debt collector in a state or federal court within one year from the date the law was violated. If you win, you may recover money for the damage you suffered. Court costs and attorney's fees also can be recovered.

Who can you tell if the debt collector breaks the law?

In addition to the federal Fair Debt Collection Practices Act, many states have their own debt collection laws. Check with your state Attorney General's office to determine your rights under state law. Federal agencies rely on consumer complaints to decide which companies to investigate. You can assist these enforcement efforts by contacting the appropriate government office. Additionally, you should always contact your Legal Assistance Office.

If a retail store, department store, small loan and finance company, oil company, public utility company, state credit union, government lending program, or travel and expense credit card company is involved, contact the Federal Trade Commission office nearest you:

6th and Pennsylvania, N.W.  
WASHINGTON, DC 20580  
(202) 523-3598

1718 Peachtree Street,  
ATLANTA, Georgia 30367  
(404) 881-4836

DEBT COLLECTION

1405 Curtis Street  
DENVER, Colorado 80202  
02114  
(303) 837-2271

450 Golden Gate Avenue  
SAN FRANCISCO, California 94102  
(415) 556-1270

26 Federal Plaza  
NEW YORK, New York 10278  
(212) 264-1207

11000 Wilshire Boulevard  
LOS ANGELES, California 90024  
(213) 824-7575

915 Second Avenue  
SEATTLE, Washington 98174  
(206) 442-4655

150 Causeway Street  
BOSTON, Massachusetts  
(617) 223-6621

2001 Bryan Street  
DALLAS, Texas 75201  
(214) 767-0032

55 East Monroe Street  
CHICAGO, Illinois 60603  
(312) 353-4423

118 St. Clair Avenue  
CLEVELAND, Ohio 44114  
(216) 522-4207

TAKE-1

DIVORCE & PROPERTY DIVISION

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

FOR USE SPECIFICALLY IN NORTH CAROLINA LAW OFFICES.

1. Q. Can a military attorney obtain a divorce in North Carolina for me?

A. No. You will need to obtain a private attorney to file for divorce and get a judgment of divorce in North Carolina. While the state laws do not specifically require that you have an attorney, it is sometimes very difficult to get the judge to grant you a divorce if you are not represented by a civilian lawyer when you go to court.

2. Q. Who pays for my lawyer?

A. As a general rule, you must retain and pay for your own attorney in a divorce case. There is no law allowing the judge to require your spouse to pay your lawyer's fees in a divorce action in North Carolina.

3. Q. What if my spouse won't give me a divorce?

A. The judge is the person who grants a divorce, not your spouse. Once you have filed the divorce complaint at the courthouse, your attorney will serve a copy of the summons and complaint on your spouse, by sheriff or by certified mail. If no answer is filed within thirty days after service, you will probably be granted a divorce by default. If your spouse contests the divorce action by filing an answer denying one or more of the statements in your complaint, a hearing will be set during which the two of you can testify and the judge can decide what the truth is.

4. Q. Is my divorce final when the judge signs the judgment?

A. Yes. There is no waiting period after entry of Judgment.

5. Q. Can I resume the use of my maiden name at the time of divorce?

A. Yes. You may ask for the right to resume your maiden name in the divorce papers your lawyer files for you. This is routinely granted by the judge. Even if you do not ask for your

maiden name back at the time of the divorce, you can file for resumption of your maiden name after the divorce is granted.

6. Q. Can I use "mental cruelty" or adultery as a ground for divorce in North Carolina?

A. No. In North Carolina, the only ground for divorce is living apart for over one year. Most divorces granted on the grounds of one year separation are uncontested, since this is essentially a "no-fault" ground for divorce, with no proof necessary as to who left whom or what reason was involved.

7. Q. If my home is another state, but I am stationed in North Carolina, can I file for divorce in this state?

A. North Carolina law states that you may file for divorce here if you have been living in North Carolina for at least six (6) months prior to the date of filing. This includes residence here because of military orders. You may, of course, wish to inquire whether you can file for divorce in your home state, and for this you should see a legal assistance officer. He or she can discuss with you the laws of your home state as to procedures, grounds, cost of filing and so on.

8. Q. Do I have to have a "legal separation" to get a divorce here, or do I have to "file for separation" in North Carolina?

A. All you need to do to obtain a divorce in North Carolina is live separate and apart from your spouse for at least one year and a day, with the intention that the separation be permanent. You will testify to this in divorce court. You do not need to show the judge a copy of a separation agreement, since such a document doesn't necessarily prove that you have indeed separated from your spouse. There is no such thing as "filing for separation" in North Carolina, although there are certain cases in which a judge can grant a "divorce from bed and board," or judge-approved separation, which allows you to live separate and apart from your partner.

9. Q. Can the judge in North Carolina order a property division at the time of divorce?

A. After the divorce has been granted, the judge can divide the marital property of the couple if the court has been requested by either or both of them to do so. The court would not have the power to divide the marital property if neither party asked the court to do so before the divorce judgment was entered or if the parties had already executed a separation agreement that fairly divided their property.

10. Q. Is there some property that the judge cannot divide?

A. The judge in North Carolina cannot divorce "separate property" and there are several kinds of separate property. Property acquired by either party before the marriage cannot be divided by the judge. Property acquired by either party by gift or by inheritance is separate property, even if it is later traded or exchanged for another item. Business and professional licenses are also separate property if they cannot be transferred to another individual. As of August 1, 1983, the courts of North Carolina acquired the power to divide vested pension and retirement rights that accrued during marriage as "marital property.

11. Q. How will the judge divide our property?

A. There is a strong presumption in North Carolina law that the fairest split would be an even division of all the marital property, regardless of who has title to the property, who paid for it, and so on. Under certain circumstances, however, the judge might decide that a fifty-fifty split is not fair to one or both of the parties. The statutes have a list of factors that the judge may then use to determine an unequal division of property between the couple. The judge will consider such matters as monetary and homemaker contributions to the marriage by each party, tax consequences of an unequal division, whether alimony or child support is presently being paid, source of the property and who purchased it, and so on.

12. Q. Can I get the judge to order my spouse to pay my attorney's fees in a property division case?

A. There is no power in the courts in North Carolina to award attorney's fees in property division cases. You will have to retain and pay for your own attorney to represent you, and you may also have to pay for an accountant, an appraiser, or an economist if any of their services are necessary for your case.

## DOOR TO DOOR SALES

Have you ever felt you were talked into an expensive, unplanned purchase and later wished that you could cancel the sale? In most cases, you cannot change your mind. But if you made the purchase from a door-to-door salesperson, the Federal Trade Commission's (FTC) "Cooling-Off" rule may give you three days to change your mind. The rule only applies to leases, rentals, or purchases of consumer goods or services with a purchase price of \$25 or more, made away from the seller's regular place of business and in which the seller personally solicits the sale.

Under the FTC rule, the salesperson must inform you of your cancellation rights at the time you agree to the sale. The salesperson must also give you two copies of a cancellation form (one to keep and one to send), and a copy of your contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain your right to cancel.

### How to Cancel

To cancel the sale, sign and date one copy of the cancellation form. Then mail or hand deliver it to the address given for cancellation any time before midnight of the third business day after the contract date. Keep the other copy for your records. Proof of the mailing date and proof of receipt are important, so consider sending the cancellation form by certified mail so that you can obtain a return-receipt.

If you are not given cancellation forms, you can write your own cancellation letter or telegram. Remember to send it within three business days, preferably by certified mail. Also, let the FTC know that you were not given the required cancellation forms.

You do not have to give a reason for cancelling. No explanation of any kind is required. Under the law, it is your right to change your mind.

### Where The Rule Applies

The rule applies not only to sales made in your home, but also to sales made anywhere other than the seller's normal place of business. For example, it applies to consumer product "parties" given in private homes and to sales made in rented hotel rooms or restaurants.

## DOOR TO DOOR SALES

The rule also applies if you invite a merchant into your home or into someone else's home, or if you meet on a street corner. In all these cases, you still have the cancellation rights.

### The Seller's Responsibilities

If you cancel your purchase, the merchant must, within ten days:

- \* cancel and return any papers you signed;
- \* refund your money and tell you whether any product left with you will be picked up; and
- \* return any trade-in.

Within twenty days, the merchant must either pick up the items left with you, or, if you agree to send back the items, reimburse you for mailing expenses.

### Some Exceptions

You do not have three days to cancel all types of contracts. The cooling-off rule does not cover sales that:

- \* are made at the seller's regular place of business;
- \* are made totally by mail or phone;
- \* are under \$25;
- \* are for real estate, insurance, or securities; or
- \* are for emergency home repairs.

### State Law Protection

In addition to the FTC regulations, many states have enacted their own Door-to-Door Solicitation statutes. These state laws always provide at least as much protection for the customer as the FTC regulations, and frequently they provide even better protection. For example, the Virginia law extends the cancellation period beyond three days if the Notice of Cancellation Rights fails to provide the purchaser with all the required information and also allows you to rescind telephonic sales. For more information concerning state laws, contact your Legal Assistance office.

DOOR TO DOOR SALES

**Avoid Problems--Shop Carefully**

The 3-day cooling-off rule helps you protect yourself if you change your mind about a purchase made at home. However, your best bet is to take your time and make sure you really want what you are buying before you sign the contract.

## **FAIR CREDIT BILLING**

Has the department store's computer ever billed you for merchandise you returned to the store or never received? Or has a credit card company ever charged you twice for the same item or failed to properly credit a payment made on your account? Credit billing errors do occur, and they are easy to resolve if you know how to use the Fair Credit Billing Act (FCBA). Congress passed this law in 1975 to help consumers resolve disputes with creditors and to ensure fair handling of credit accounts.

### **Which Credit Transactions are Covered?**

The FCBA generally applies only to "open end" credit accounts. Open end accounts include credit cards, revolving charge accounts (such as department store accounts). The periodic bills, or billing statements, you receive (usually monthly) for such accounts are covered by the FCBA. The Act does not apply to a loan or credit sale that is paid according to a fixed schedule until the entire amount is paid back.

### **What Types of Disputes are Covered?**

The FCBA settlement procedure applies only to disputes over "billing errors" on periodic statements, such as the following:

- Charges not made by you or anyone authorized to use your account.
- Charges for erroneous amounts.
- Charges for goods or services you did not accept or which were not delivered as agreed.
- Computational or similar errors.
- Failure to properly reflect payments or other credits, such as returns.
- Not mailing or delivering bills to your current address (provided you give a change of address at least 20 days before the billing period ends).
- Charges for which you request an explanation or written proof of purchase.

## FAIR CREDIT BILLING

### How to Use the Settlement Procedure

When many consumers find a mistake on their bill, they pick up the phone and call the company to correct the problem. You can do this if you wish, but phoning does not trigger the legal safeguards provided under the FCBA.

To be protected under the law, you must send a written billing error notice to the creditor. Your notice must reach the creditor within 60 days after the first bill containing the error was mailed to you. Send the notice to the address provided on the bill for billing error notices (and not, for example, directly to the store, unless the bill says that's where it should be sent). In your letter, you must include the following information.

- Your name and account number.
- A statement that you believe the bill contains a billing error and the dollar amount involved.
- The reasons why you believe there is a mistake.

It's a good idea to send it by certified mail, with a return receipt requested. That way you'll have proof of the dates of mailing and receipt. If you wish, send photocopies of sales slips or other documents, but keep the originals for your records.

### What Must the Creditor Do?

Your letter claiming a billing error must be acknowledged by the creditor in writing within 30 days after it is received, unless the problem is resolved within that period. In any case, within two billing cycles (but not more than 90 days), the creditor must conduct a reasonable investigation and either correct the mistake or explain why the bill is believed to be correct.

### What Happens While a Bill Is Being Disputed?

You may withhold payment of the amount in dispute, including the affected portions of minimum payments and finance charges, until the dispute is resolved. You are still required to pay any part of the bill which is not disputed, including finance and other charges on undisputed amounts.

## FAIR CREDIT BILLING

While the FCBA dispute settlement procedure is going on, the creditor may not take any legal or other action to collect the amount in dispute. Your account may not be closed or restricted in any way, except that the disputed amount may be applied against your credit limit.

### What About Your Credit Rating?

While a bill is being disputed, the creditor may not threaten to damage your credit rating or report you as delinquent to anyone. However, the creditor is permitted to report that you are disputing your bill.

Another federal law, the Equal Credit Opportunity Act, prohibits creditors from discriminating against credit applicants who, in good faith, exercise their rights under the FCBA. You cannot be denied credit merely because you have disputed a bill.

### If the Creditor Makes a Mistake

If your bill is found to contain a billing error, the creditor must write you explaining the corrections to be made on your account. In addition to crediting your account with the amount not owed, the creditor must remove all finance charges, late fees, or other charges relating to that amount. If the creditor concludes that you owe part of the disputed amount, this must be explained in writing. You also have the right to request copies of documents proving you owe the money.

### If the Bill Is Correct

If the creditor investigates and still believes the bill is correct, you must be told promptly in writing how much you owe and why. You may also ask for copies of relevant documents. At this point, you will owe the disputed amount, plus any finance charges that accumulated while it was disputed. You may also have to pay the minimum payment amount missed because of the dispute.

### If You Still Disagree

Even after the FCBA dispute settlement procedure has ended, you may still feel the bill is wrong. If this happens, write the creditor within 10 days after receiving the explanation and say you still refuse to pay the disputed amount. At this point, the creditor may begin collection procedures. However, if the creditor reports you to a credit bureau as delinquent, he or she must also state that you don't think you owe the money. Also, you must be told who receives such reports.

## FAIR CREDIT BILLING

### If the Creditor Doesn't Follow the Procedures

Any creditor who fails to follow the FCBA dispute settlement procedure may not collect the amount in dispute, or any finance charges on it, up to \$50, even if the bill turns out to be correct. For example, this penalty would apply if a creditor acknowledges your complaint in 45 days (15 days too late) or takes more than two billing cycles to resolve the dispute. It also applies if a creditor threatens to report--or goes ahead and improperly reports--your nonpayments to anyone. You also have the right, as more fully described below, to sue a creditor for any violation of the FCBA.

### Complaints and Quality

Disputes about the quality of goods and services are not necessarily "billing errors," so the dispute procedure may not apply. However, if you purchase unsatisfactory goods or services with a credit card, the FCBA allows you to take the same legal actions against the credit card issuer as you could take under state law against the seller. If your state law permits you to withhold payment to a seller for defective merchandise, or pay and sue for a refund, you might also be able to withhold payment to your credit card issuer. Because state laws on your right to stop payment vary, it is best to get legal advice from your Legal Assistance Office before you do so.

However, before you take legal action, you must give the seller a chance to remedy the problem. Also, unless the seller is also the card issuer (such as a company that issued you a gasoline credit card), you must have bought the item in your home state or within 100 miles of your current mailing address, and the amount charged must have been more than \$50.

### Other Billing Rights for Consumers

The FCBA also requires "open end" creditors to do the following for their customers:

- Give you a written notice when you open a new account, and at other specified times, describing your right to dispute billing errors.
- Provide a statement for each billing period in which you owe--or they owe you--more than \$1.00.
- Mail or deliver your bill to you at least 14 days before the payment is due, if you are given a time period within which

## FAIR CREDIT BILLING

to pay the bill without incurring additional finance or other charges.

- Credit all payments to your account as of the date they are received, unless not doing so would not result in extra charges.
- Promptly credit or refund overpayments.

### You Can Also Sue

You can sue a creditor who violates any FCBA provisions. If you win, you may be awarded damages resulting from the violation, plus twice the amount of any finance charge (not less than \$100 or more than \$1,000). The court may also order the creditor to pay your attorney's fees and costs. You may consult your Legal Assistance Office for advice about such lawsuits, but a military legal assistance attorney will generally not be able to represent you in court. If possible, retain a private attorney who is willing to accept whatever fee the court awards as the entire fee for representing you. Some lawyers may not be willing to accept your case unless you agree to pay their fee--win or lose--or if you will add to a fee awarded by the court but which they believe is too low. Be sure you get a full explanation of what it could cost before you go to court. Your military Legal Assistance Office can help you with these explanations.

## WHAT YOU NEED TO KNOW ABOUT FINANCIAL PLANNERS

Today, nearly a quarter of a million American men and women earn their living as financial planners. If you decide to hire a financial planner, a good one should analyze your finances and recommend how to improve your situation. Successful financial planners may have as many different investment strategies as the clients they serve. Make sure the financial planner you choose works on behalf of your interests and needs.

A financial planner should assist you in the following ways:

-- Assess your financial history, such as tax returns, investments, retirement plan, wills, and insurance policies.

-- Help you decide on a financial plan, based on your personal and financial goals, history, and preferences.

-- Identify financial areas where you may need help, such as building up a retirement income or improving your investment returns.

-- Write down a financial plan based on your individual situation and discuss it thoroughly with you in plain English.

-- Help you implement your financial plan, including referring you to specialists, such as lawyers or accountants, if necessary.

-- Review your situation and financial plan periodically and suggest changes in your program when needed.

Before you select a financial planner, you may want to ask yourself these questions:

**What are my financial goals today and ten years from now?**

Before you ask for advice, it is helpful to know where you want that advice to take you. Factors to consider in analyzing your needs include the size of your family, whether you want to go into business for yourself someday, how much money you expect to need for retirement, and what your budget can afford now and in the near future.

**What is my personal investment philosophy?**

Do you enjoy risky ventures? Do you seek the comfort of solid, blue-chip investments? Or, do you want an investment mix? Be sure to make clear to a financial planner exactly what investment philosophy you are most comfortable with.

## **FINANCIAL PLANNERS**

### **HOW TO SELECT A FINANCIAL PLANNER**

There are several ways consumers can look for a financial planner who will suit their needs. One place to begin is by contacting one of the major groups that represent financial planners, such as the International Association of Financial Planning (IAFP), an association of individuals who work in the financial planning industry, or the Institute of Certified Financial Planners (ICFP), a professional organization that accredits planners. Both can provide you with free information about the financial planning industry as well as names of members in your area.

Recommendations of friends and colleagues who have had investment successes may play a role as you select a financial advisor. But even an investment advisor who impresses one client may be unsuitable for another investor's needs. You are likely to want to select a firm or individual who has the skills and expertise to meet your specific needs. Be certain that any planner you consider hiring has ample knowledge of taxes, insurance, estate and retirement planning issues, as well as the basics of investments and family budgeting. Check with the Better Business Bureau to determine if any complaints have been lodged against the planner you expect to use.

In a preliminary interview, you may wish to ask any financial planner these questions:

#### **What credentials do you have to practice financial planning?**

Financial planners come from a variety of backgrounds and, therefore, may hold a variety of degrees and licenses. There are no state or federal regulations for the financial planning industry. However, some take specialized training in financial planning and earn credentials such as Certified Financial Planner (CFP) or Chartered Financial Consultant (CHFC). Others may hold degrees or registrations such as lawyer (JD), Certified Public Accountant (CPA), or Chartered Life Underwriter (CLU).

Question financial planners carefully about their background and experience. Be wary of individuals who promote various investment items without discussing with you any overall financial planning goal. They may lack the expertise to formulate one.

**Are you registered with the federal Securities and Exchange Commission (SEC) or with a state agency?**

Anyone who may be giving advice on securities (including tax shelters), use of the stock market, or the value of securities over other types of investments should be registered with the SEC or registered under state laws dealing with investment advisors.

**How would you prepare my financial plan?**

Financial planners usually prepare financial plans after carefully discussing and analyzing your personal and financial history, your current situation, and your future goals. Some financial planners enter relevant financial information into a computer to generate standard financial plans. This type of plan is often useful, though be certain your unique financial situation is taken into account. Be sure to find an advisor who will give you personalized advice for your situation.

**How many companies do you represent?**

Someone who represents only one or two companies probably is not a financial planner, but more likely a broker or salesperson. It will be to their advantage to sell you only those products offered by the companies they represent. You may want to seek an advisor who can offer you a wide range of choices to suit your needs.

**Who will I deal with on a regular basis?**

You will want to work consistently with someone who is completely familiar with your account. Many large firms offer a variety of different financial services. Make sure that such institutions provide a comprehensive and coordinated method of referral among the various "experts" who can advise you about financial plans. Ask how the planner will keep you regularly advised about important financial information.

**How do you keep up with the latest financial developments?**

You may want to look for a planner who enrolls in continuing education courses (or, perhaps, teaches in a business school) to keep current on tax and investment strategies. Regular members of the Institute of Certified Financial Planners, for example, are required to complete 30 hours of continuing education every year in order to maintain full membership status.

## **FINANCIAL PLANNERS**

### **Will you be involved in implementing the plan you suggest?**

Financial planners will develop a plan specifically tailored to your situation and needs. Some planners also will include provisions for updating your plan to adjust to changes in your life, current economic conditions, and tax laws. Your financial planner also can provide for periodic reviews of your plan to show you the progress that is being made in reaching your goals. You should ask if your planner can provide this type of ongoing service and what those services will cost.

### **NEGOTIATING FEES**

Fee arrangements with a financial planner are quite similar to the payment system for a lawyer. There are a variety of fee options that you should explore to see which serves your interests best. Ask about the following arrangements:

#### **Fee-only Financial Planners**

Fee-only planners base their charge on gathering your financial data, analyzing it, and recommending a plan of action. Hourly or flat fees are most common. Payment is required whether or not you choose to implement the suggested plan. Many fee-only planners cater to wealthy investors, but you may try this arrangement if you can negotiate a reasonable price.

#### **Commission-only Planners**

Some planners charge no fee for service to their client but make their money instead through commissions paid by the marketers of the investment products they sell. For example, if a client buys insurance on the advice of a financial planner, the planner will not charge the client for that advice but will receive a commission from the insurance company.

Planners who rely only on commissions might be more eager to direct your financial plan toward the purchase of products that provide them with the best commissions. Therefore, you may want to exercise caution in following the advice of a planner who works on commission until you develop a trusting relationship with one who knows your complete financial picture.

**Fee and Commission Planners**

Some financial planners receive payments from both a sales commission and a fee. If, for example, the planner receives a commission from the company that sells the product you purchase, the fee you are charged may be less.

**Written Estimate of Fees and Services**

Make sure you get a written estimate of what services you can expect for what price. Compare this estimate with others and select the package of services that best meets your needs at a reasonable cost.

UNIFORMED SERVICES  
FORMER SPOUSES PROTECTION ACT (USFSPA)

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

1. Q. What is USFSPA?

A. USFSPA is a law enacted by Congress to offer some protection to certain former spouses of soldiers. It allows states to divide military pensions as marital property upon divorce. It allows some former spouses through a court order to be awarded a share of military retirement pay by direct payment from a military Finance Center and to obtain certain other benefits.

2. Q. What is retirement pay?

A. Retirement pay is the total monthly retired pay to which a member is entitled. It does not include disability pay, federal debts and taxes, state and local income taxes, government life insurance premiums, or Survivor Benefit Plan annuity premium payments.

3. Q. Can I get child support or alimony taken out of my spouse's retirement pay and sent directly to me?

A. Yes. In order to receive direct payment from a Finance Center for alimony and child support under the Act, you will need to get a court order directing payment of child support or alimony. The court order does not have to state specifically that the award is made as direct payment of retirement pay. The court order and/or other documents served with the court order must identify the soldier concerned and, if possible, the Social Security number of the soldier.

4. Q. If part of the retirement pay is awarded as my property upon divorce, how do I obtain direct payment from the Finance Center?

A. You must meet the "10-year test" in order to receive direct payment under the Act. You, the former spouse, must have been married to the servicemember for a period of 10 years or more, during which the member performed at least 10 years of creditable service for retirement purposes. Further, if you meet the test, you must get a court order specifically stating that the award shall be made as direct payment of retirement pay.

5. Q. Do all states allow military retired pay to be divided as marital or community property?

A. No. Most states have case law or legislation that allows the division of military pensions as marital property but a few do not. You should check the laws of the state where you presently live and the "home state" or domicile of the soldier. You should also consult a legal assistance attorney as to pension division in specific states.

6. Q. If I die, what happens to the award?

A. Under USFSPA, your rights to the military pension end upon your death. Payments cannot be made to your estate, survivors or heirs.

7. Q. Do I still continue to receive the benefits after the soldier dies?

A. It depends. Federal law states that, in the event the retired soldier dies, the person receiving the award shall receive no further benefits unless the Survivor Benefit Plan (SBP) has been elected by the soldier. Payments will continue if SBP coverage has been chosen.

8. Q. Is there a maximum amount that I can receive under USFSPA or state law?

A. Yes. Both state law and USFSPA limit pension division awards to 5<sup>th</sup> per cent of the net retirement pay, regardless of whether the pay is awarded as child support, alimony, or marital property to be directly paid from the Finance Center. There are certain limited exceptions in the event of multiple court orders involving different spouses.

9. Q. What can I do if the soldier owes more than the amount under USFSPA?

A. If this happens, the Finance Center cannot help you. You will need to take action directly against the individual soldier through the courts for amounts in excess of 50 per cent of the monthly retired pay.

10. Q. Besides retirement pay, what other benefits can I receive under USFSPA?

A. If you are a former spouse and meet certain requirements, you may be able to receive medical, dental, commissary and post exchange privileges.

11. Q. Can I receive full benefits?

A. You can receive full benefits if you meet the "20/20/20 test". This three-part test requires that you must have been married to the soldier for at least a period of 20 years. The soldier must have performed at least 20 years of active creditable service toward retirement. Finally, at least 20 years of the marriage must be concurrent with at least 20 years of active service. You must meet all three parts of the test.

12. Q. Does the date of the divorce decree matter if I meet the "20/20/20 test"?

A. No. If you meet the test, you are eligible to receive full benefits regardless of the date of the divorce decree.

13. Q. If I do not meet the "20/20/20 test" for full benefits, are there other benefits available?

A. Yes. You may be able to receive permanent medical benefits if the divorce decree was final before 1 April 1985 and you meet the "20/20/15 test".

14. Q. What are the criteria for the "20/20/15 test"?

A. You must have been married to the soldier for at least 20 years during which the member performed at least 20 years of creditable service towards retirement. Finally, at least 15 years of the marriage must have been concurrent with 20 years of service. Again, as with the "20/20/20 test", you must meet all parts of the test.

15. Q. If I receive full benefits, can I be covered by other medical insurance?

A. Under either test, if you receive full benefits you cannot be covered by any type of employer-sponsored medical coverage. However, you can refuse your employer-sponsored medical benefits and retain the military medical benefits. You will not be disqualified if you have individually obtained medical insurance.

16. Q. May I retain the full benefits if I remarry?

A. No. You must remain unmarried under either test. Any subsequent remarriage eliminates the benefits, even if you are widowed or divorced later.

17. Q. If I meet the "20/20/15 test", but my divorce decree is final after 1 April 1985, am I still eligible for benefits?

A. Yes. You are entitled to two years of transitional benefits, after which you will have the right to convert to a private health plan set up by the Defense Department. However, you must remain unmarried and not have the employer-sponsored medical coverage.

18. Q. If I have questions about my rights under USFSPA, what should I do?

A. Please consult a legal assistance or private attorney of your choice as soon as possible. Your lawyer can answer the many questions that arise under USFSPA and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.

## **HEALTH SPAS: EXERCISE YOUR RIGHTS**

Looking for a way to get in shape? You may be considering joining a health spa, a place where members work to improve their physical condition through exercise, weight control, and other treatments. While many people regularly use and enjoy health spas, others have written the Federal Trade Commission with complaints or complained to the local Legal Assistance Office. The most frequent complaints concern high pressure sales tactics, misrepresentations about facilities and services, and spas that go out of business. You may avoid disappointment, however, if you find out about the spa's fees, contractual requirements, and facilities before you join. Here are some suggestions for comparison shopping for a health spa.

**INSPECT THE SPA.** Visit during the hours you would normally use the spa. See if the spa is overcrowded during that time. Notice whether the facilities are well-maintained. Inspect everything for cleanliness, and also note the condition of the equipment. And you may want to ask some of these questions:

- \* Is there a trial period during which I can sample services but not be obligated to join?
- \* How many members do you have? Is there a limit to the number of people who can join? Many spas set no membership limit. So while the spa may not be crowded during your visit, this condition may change--especially if the spa is new.
- \* What hours will I be able to use the spa? A spa may be open all week, but may be limited to men on some days and women on others.
- \* What qualifications or special training do your instructors have?

**CONSIDER CONTRACTS CAREFULLY.** Some spas ask you to join right away. You might be offered a special time-limited rates as an incentive. But if you wait a few days, you may make a better decision. Take the contract home and read it carefully. Before you sign it, see if you can answer these questions:

## HEALTH SPAS

- \* Is everything the salesperson promised written in the contract? If a problem arises after you join, the contract will probably govern the dispute. So if it is not written in the contract, don't rely on it.
- \* Is there a "cooling-off" period? Some spas give you several days to reconsider your decision to join after you have signed the contract.
- \* Can you get a refund if you need to cancel? If you move, become disabled, or just want to stop using the spa, can you get a refund or get out of your contract? This is especially important if you choose a long-term membership.
- \* Can you join for a short time only? It may be to your advantage to pay a little more money and join for only a few "trial" months. That way, if you are not enjoying the membership or using it as much as you planned, you will not be committed to many years of payments.
- \* Can you afford the payments? Take into consideration the finance charges and annual percentage rates when you figure the total cost of your membership. Figure this per week and per day to give you a better idea of what it will cost to use the spa.

### FOR MORE INFORMATION

Before you join a spa, you may want to contact your local consumer protection office, state Attorney General, Better Business Bureau, or local Legal Assistance Office to find out if they have received any complaints about the spa. If problems arise after you join, you can also contact these offices for assistance.

## INCOME TAX PREPARATION SERVICES

Tax time is when many Americans consider getting help from an income tax preparation service. These services, however, may vary greatly in accuracy and cost. The following information will help you decide whether you need a tax preparer and, if so, to select the one that best suits your needs.

### Do You Need A Tax Preparer?

Before you decide to hire a tax preparer, make sure you really need to pay for assistance. The military Tax Assistance Program is designed to provide trained assistance by soldiers and trained volunteers for soldiers in the preparation of their taxes. Under this program, military lawyers work with the Internal Revenue Service's Volunteer Income Tax Assistance (VITA) Program personnel. VITA personnel train designated members of the military to assist soldiers in the preparation of their federal and state tax returns. Soldiers with unique or complicated tax questions are referred to a legal assistance attorney for assistance. On some installations, legal assistance offices prepare returns for thousands of soldiers, even those without complicated tax issues. Under this program soldiers are saved countless dollars that otherwise would have been spent in fees to commercial tax preparers.

### If You Decide Not to Use the Military Tax Assistance Program

If you do not want to use the program, with a little help from the IRS, you may be able to do as good a job as a commercial tax preparer. Of course, this depends on the complexity of your tax situation. If you use the short (1040) form, the IRS will complete most of it for you and compute your taxes for free. If you have questions about how to complete your return, you may be able to get answers by using the IRS free informational resources. If you remain unsure about how to do your taxes, the following information may help you comparison shop for a suitable tax preparer.

### Types Of Preparers

Preparers differ greatly in education and training.

## INCOME TAX PREPARATION SERVICES

An enrolled agent is certified by the IRS after having worked five years as an IRS auditor or after passing a government exam. Enrolled agents are authorized to represent you before the IRS.

A certified public accountant (CPA) has passed a professional qualifying exam. CPA's are also authorized to represent you before the IRS. A public accountant may have special accounting training, but lacks certification and cannot represent you before the IRS.

An attorney has passed a bar exam but may or may not have special tax training. Attorneys are authorized to represent you before the IRS.

Any other individual described as a "tax preparer" may or may not have special training or experience. Some preparation firms require that their staffs have extensive training and experience, while others have less rigorous requirements.

### Choosing A Preparer

The more complex your tax situation, the more you may want the advice of someone with specialized experience. However, you may be charged more for the advice of these professionals. Many taxpayers, such as retired people, owners of small businesses, professionals, and people with large amounts of income from sources other than salaries, wages, and tips, may especially benefit from using a preparer with specific experience in their area. To find the preparer that best suits your needs, call several and ask:

What is your training or experience in preparing tax returns?

How do you check for accuracy? Will someone else double-check my return? If so, will it be reviewed for arithmetic errors only or also for errors in tax-law interpretation?

Approximately how much will preparing my taxes cost? How is that fee determined?

Where can you be reached later in the year, if I need help with an audit?

Can you represent me if IRS audits my return? What will you charge?

## INCOME TAX PREPARATION SERVICES

### What To Expect

When you visit the preparer, expect certain practices. A preparer should go through a checklist of deductions to see if any apply to you. A preparer should also sign your return and enter his or her name and social security number (or federal identification number).

A preparer should not guarantee you a refund before completing your return or suggest that you take nonexistent deductions or commit other improprieties. A preparer should not ask you to sign a blank return or one completed in pencil.

### It's Up To You

Even though you have hired someone to prepare your returns, you are personally liable for any additional tax, interest, or penalty, even if you have a written guarantee that the preparer will pay any interest or penalty assessed as a result of his or her work. Here are some ways to help you get the best possible work done on your returns:

\* Read your tax booklet or the more comprehensive IRS publication "Your Federal Income Tax" (publication #17). It is available free from the IRS Forms Distribution Center in your area.

\* Gather and bring to the preparer any information or documents that might apply to your taxes, including your last year's return. Remember, too much information is better than too little.

\* Make a list of any tax-related questions that occur to you and ask the preparer about them.

\* After your return is prepared, check it to make sure all the information is correct.

\* You will have an advantage if you complete your tax return early. The earlier you get your taxes prepared, the more time busy tax preparers will have to do a thorough job for you.

If you have any questions about a tax matter, see your Legal Assistance Office.

## HIRING CIVILIAN LAWYERS

The United States has more lawyers per person than any other country. So, if you need one - and many of us do at one time or another - you should be able to find one who will provide the best professional counsel at the fairest price.

This fact sheet outlines how to decide if, in fact, you need the services of a lawyer and, if so, how to select one. It also offers some important tips on working with a lawyer to get the most out of every dollar you spend on legal advice.

First, you should understand that as an active duty member of the uniformed services, or as the family member of an active duty member, you have the right to free legal advice and assistance. Each of the uniformed services operates legal assistance programs for their personnel and family members of these personnel.

Many times, the uniformed service legal assistance attorney will be able to resolve your question or problem. If not, the legal assistance attorney will be able to refer you, in most cases, to a civilian attorney who can handle your case.

### **WHEN TO LOOK FOR LEGAL ADVICE**

Many problems can be resolved without involving a lawyer. The questions and answers similar to those listed below can help you decide whether you need legal help.

#### **Can I handle this problem myself?**

Some matters not involving substantial amounts of money or property may be handled without the aid of a lawyer. In deciding whether to use a lawyer, you will need to make a judgment, based on your own experiences and those of knowledgeable friends or relatives. For example, you should consider:

- Is the matter a complex legal issue or one that is likely to be taken to court?
- Is a large amount of money, property, or time involved?
- Does the matter require the filing of complex legal papers?

You may benefit from professional legal help when dealing

## LAWYERS, HIRING CIVILIAN

in areas such as accidents that involve personal injury or property damage; establishing a new business; going through bankruptcy; preparing a complex will; signing contracts for substantial amounts of money; settling a contested divorce; or resolving estate or tax problems involving significant amounts of money or property. Of course, there may be other circumstances when you need legal assistance.

### Where, besides a lawyer, can I go for help?

Depending upon the situation, you could consider the following alternatives to hiring a lawyer for a specific matter:

-- Consult services which may be available on the installation. For example, Red Cross, Emergency Relief, or Community Services Agencies on installations can provide help on consumer problems and other matters and the installation Housing Referral Office sometimes assists in landlord/tenant matters.

-- Discuss the problem with the people involved and try to work out an acceptable compromise.

-- Seek the advice of someone who could help mediate the dispute on an informal basis, such as a religious advisor or family counselor.

-- Consult a good do-it-yourself legal guidebook. To find one, check the selection at your local bookstore or ask a knowledgeable acquaintance for a recommendation.

-- Contact your local or state consumer protection agency.

-- Consider taking the problem to an impartial third-party organization that will listen to both sides of the dispute and help you reach a resolution. You can find these arbitration or mediation services at places such as your Better Business Bureau.

-- Take the matter to Small Claims Court, where, depending upon the state, claims from \$100 to \$5000 may be considered. Check with your local municipal court for the rules that apply in your area.

-- Hire a general practitioner attorney for one hour and let him or her advise you about alternatives.

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Where can I go if I cannot afford legal fees, but need a lawyer's help?

If you cannot afford to hire a lawyer at the full fee, there are several legal assistance options. You may want to check your local phone directory to find out which services are available in your community.

The federal government's Legal Services Corporation funds offices across the nation to serve low-income clients. Legal Aid Societies and other public legal assistance programs in your county or city also may be able to help.

In addition, your local area agency on aging may be able to assist you or refer you to an appropriate organization. You also may want to contact the local bar association's referral service, the municipal courthouse, or the District Attorney's office for information. If you live near a law school, find out if it has a legal clinic serving the community.

### HOW TO SELECT A LAWYER

Once you decide you need a lawyer, how can you go about finding one who is suited to your needs? Here are some suggestions:

-- Begin by asking friends, neighbors, or co-workers about lawyers they have used. Pay special attention to what you hear from people who have had problems like yours that were resolved in a satisfactory way.

-- Your legal assistance office is also authorized to recommend competent civilian attorneys.

-- Contact your state, city, or county bar association and ask for the names and phone numbers of lawyers who handle cases within your area of concern. Most bar associations have a Lawyer Referral and Information Service to provide this kind of information.

-- Check the Yellow Pages - for areas of specialty, hours, and locations. You also may obtain information by looking for lawyer advertisements in newspapers and on the radio and television.

-- If you live or work near a law school, contact the dean's office, describe your problem, and ask if the school or individual faculty members are able to recommend someone

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to take your case.

**QUESTIONS TO ASK THE ATTORNEY BEFORE HIRING HIM OR HER.**

**Will you meet with me to get acquainted before I hire you?**

Many lawyers will meet with you once without charge, as long as you make it perfectly clear that you do not expect free advice about the details of your case during this get-acquainted session. Before going to such a meeting, write down the questions you want to ask. Bring along any relevant documents, so that you can leave copies (not the originals) if you decide to hire the lawyer. You may want to choose a lawyer who talks with you in language you can understand - not "legalese." Here are some questions to ask the lawyer at the first meeting:

**What percentage of your practice is devoted to cases like mine?**

Some lawyers specialize in a particular type of law, such as family, tax, or criminal law, and they may charge higher fees than general practitioners. On the other hand, they may be able to get the job done faster for you, and so the overall cost may be the same or even less. Most general practice lawyers also can handle a variety of legal matters. Ask the lawyer you are interviewing about the results of some recent cases similar to yours, including time spent and fees charged. Finally, ask the lawyer for the names and phone numbers of clients you can call for references.

**Will you personally work on my case, or will you delegate it to an associate or paralegal assistant?**

Some attorneys turn over much of their work to junior associates or paralegal assistants. This can save the client money - but only if assistant services are billed separately from the lawyer's rate and if their work is well-supervised.

**Will you keep me notified about the progress of my case?**

A lawyer should keep you up-to-date on what is happening with your case, especially if there is a chance the initial estimated fee will increase. You also may want to know whether the lawyer will be easily accessible to you by telephone.

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How long should it take you to complete my case and what, roughly, is it going to cost me?

Most state bar associations have arbitration committees which, for a certain charge, will settle disputes that you may have with your lawyer about fees. By agreeing to binding arbitration, both attorney and client agree to present their cases to an outside panel and to abide by its decision in the dispute. Ask whether consumer representatives serve on the arbitration panels and whether the panels will consider disputes other than those over fees. In addition to bar associations, some consumer agencies also offer arbitration services.

### NEGOTIATING FEES

Most fees are agreed upon through discussions between clients and lawyers. If you cannot afford what the lawyer asks, say so. Fees are negotiable. Shop around until you find a lawyer who is willing to work within your budget. If necessary, you may want to discuss working out a payment plan if you do not think you can afford a lump fee.

Here are some questions to ask about fees:

**What services do you provide for a flat fee?**

Often, you will be able to pay a set fee for straight-forward tasks such as composing a deed or will or conducting a title search.

**What are your hourly rates?**

Depending upon the experience and reputation of the lawyer, you could pay a lawyer from \$75 to \$400 per hour. If your case is not a fairly simple one for which you can negotiate a single flat fee, the hourly rate you agree to pay the lawyer should be understood at the outset. It is very common for lawyers to charge by the tenth or quarter-hour. This practice can save the client money particularly if your case involves many phone calls. For example, if your lawyer charges by the quarter-hour and you are on the phone for only five minutes, you still will have to pay for a full quarter-hour of the lawyer's time. Since smaller increments may add up to less total cost, clients working with lawyers who work on hourly rates should ask about tenth and quarter-hour charges. Ask your lawyer to put a top limit on the fee you will be charged.

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### Do you require a retainer for your services?

A retainer is similar to a downpayment for services to be performed. Be certain you know exactly what services are and are not covered by the retainer. Ask that the retainer be applied to the balance owed. And, you may want to ask the lawyer to agree ahead of time to a refund if the retainer seems to have exceeded the cost of time actually spent on the case.

### Do you accept contingency fee arrangements?

If you are under financial pressure or cannot raise enough money to hire a lawyer on an hourly basis, you may want to request a contingency fee arrangement. Under this arrangement, the lawyer collects a percentage of any amount of money you win as a result of the case being decided in your favor. If you do not win the case, the lawyer does not receive a fee. Since you may have to pay court costs, which are different from lawyers' fees, be wary of statements that there will be "no charge" if you do not win.

Ask whether the lawyer computes the contingency fee before or after the expenses for handling the case are disbursed. You may collect more money if expenses, such as court costs or witness fees, are deducted before the contingency fee is computed.

The customary contingency fee is 33 percent of the settlement or award, although fees range from 25 percent to 50 percent. Some lawyers offer a sliding scale in which the percentage changes depending on one or both of these factors: how long it takes to settle the case; and/or how much the award is.

If the sliding scale is based upon how long it takes to settle, for example, the lawyer may collect 25 percent if you settle before trial, 30 percent if there is a trial, and 40 percent if there is an appeal. Or, the sliding fee scale may be based on the size of the amount, with the lawyer generally receiving a lower percentage as the amount increases. You should discuss the sliding fee option with your lawyer to negotiate the best price.

### GET IT IN WRITING

The best way to protect yourself and avoid misunderstandings is to have the agreement you make with your lawyer put into writing and signed by both parties. A request to put your

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agreement in writing should be made at the first meeting between you and your lawyer - before your lawyer begins any work on your case. You may want to ask:

**Will you put this agreement in writing?**

Many lawyers have simple one-page contracts for this purpose, but usually such contracts do not address the client's specific concerns. Ask that all fee arrangements and agreed-upon services be included in your contract. In addition, include in your contract a provision for settling any unforeseen disputes (such as fee disagreements or delays in handling your case) between you and your lawyer. If the lawyer will not put this information in writing, you may want to consider looking for another lawyer.

**Will you provide a written estimate of all costs - including expenses - before you begin work on the case?**

Among the most important documents required in all dealings is the written estimate. The lawyer should provide one that includes an estimate not only of the fees, but also of filing and court costs, letters, copying, time on the phone, and other expenses that may be connected with your case.

**Will you itemize your bills?**

Ask that all billings be itemized and sent to you on a regular basis. If you wish, you may include limitations or a ceiling on costs that cannot be exceeded without your written permission.

YOU AND YOUR LAWYER

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

1. Q. How do I choose a private attorney?

A. There are many ways to select a private attorney if you do not have one in mind already. In some cases, you may have been represented previously by an attorney who could help you in your present situation. Then again, there may be a friend or relative who has been represented by a good lawyer in a case similar to yours. Additionally, the legal assistance attorney may be able to refer you to a reputable civilian attorney.

2. Q. Are there other ways of picking a civilian attorney?

A. Yes -- Every state has a Lawyer Referral Service. The telephone number may be obtained through Information. For example, the North Carolina Bar Foundation maintains a Lawyer Referral Service in Raleigh. By calling the toll-free number (800-662-7660 for calls placed within North Carolina), you can obtain the names of lawyers in North Carolina who may be able to help you. You can also choose a lawyer based on advertising or any number of other ways. The important thing is that you choose a lawyer able to handle your case and able to work with you. Any way of selecting a lawyer is satisfactory if it achieves these goals, for it is very important for the client to have confidence in his or her attorney.

3. Q. When would I need a civilian attorney instead of a legal assistance attorney?

A. A legal assistance attorney may not be able to help you in every situation, due to state laws, military regulations and available manpower. For example, you will probably need to hire a lawyer to represent you if you have been sued or if you wish to file a lawsuit. You will also need to retain an attorney if you need a complex will to be drafted. Many military lawyers are licensed to practice in a state other than where they are assigned and therefore are not permitted to appear in other state courts. Sometimes a regulation will prohibit advice or representation, such as in cases involving a conflict of interest or income-producing property of a client. In any of these cases, you will need to retain a private attorney to advise and represent you. Your legal assistance attorney will let you know if your case requires referral to a civilian attorney.

4. Q. Will my civilian lawyer treat everything I say confidentially?

A. Your civilian lawyer is bound by the same ethical obligations as a legal assistance attorney. This means that what you say to your lawyer is "confidential information" that must be held in confidence unless you give permission otherwise. In addition, your civilian attorney has the duty to:

a. Let you make the major decisions in your case, such as pleading guilty in a criminal case or accepting a compromise or settlement in a civil case; and

b. Remain open and honest with you in all aspects of your case, including the chances of success, the good and bad sides of your position, the time needed and the fee required. The applicable State Bar is responsible for maintaining and enforcing these standards of conduct for attorneys licensed in that state.

5. Q. How do civilian lawyers charge for their services?

A. Lawyers set their fees in a number of ways. The major types of fees are flat rates, contingency fees and hourly billing.

6. Q. When is a flat fee used?

A. Lawyers may use a flat fee in handling certain civil and criminal cases where the work involved is usually straight forward, predictable and routine. Thus, many lawyers use a flat rate or set fee in uncontested divorces, simple wills, traffic tickets and misdemeanors, adoptions and name changes. Court costs (filing fees, witness fees and sheriff's costs) are usually not included in the flat fee. A flat fee is one which is paid in advance (ordinarily) and does not vary depending on the amount of time or work involved. No refund is due if the work takes less time than expected and no additional charge is made if the case is longer or more complex than usual.

7. Q. What is a contingency fee?

A. A contingency fee (or contingent fee or percentage) is one which is paid by the client only if the lawyer is successful. It is paid out of the sum of money that is collected by the lawyer and thus is available only in civil lawsuits which involve suing for a sum of money, such as auto accident cases and malpractice claims. A typical fee charged by a lawyer might be one figure (25-33%) if the case is settled without trial and another (33-40%) if it is necessary to go to court. On the other hand, some lawyers charge a single percentage regardless of whether trial is necessary or not. Since the lawyer collects no fee if the case is lost, you will usually need to have a case with clear liability and damages before a lawyer will agree to a contingency fee in handling the

case.

8. Q. When do lawyers charge on an hourly basis?

A. An hourly rate is most common when the client's work will be substantial, but it is difficult to estimate how much time it will take. Thus, for example, a lawyer might charge on an hourly rate for a contested custody or contract case, or for the preparation of a family trust document. It is fairly common for the lawyer to require a retainer to be paid before starting on the case. This amounts to a deposit or downpayment to make sure that the client is serious about the case and is financially prepared to cover the costs that may be incurred. The size of the retainer and whether any part of it is refundable will vary from case to case and lawyer to lawyer.

9. Q. Does the court ever award attorney's fees?

A. Yes -- Courts are authorized to award attorney's fees in several situations. For example, in North Carolina, the major ones are as follows:

a. When the attorney acts as a trustee or agent for the court to manage money, property or other assets, the court can usually grant the lawyer a fee to be paid out of the assets managed. Thus, a lawyer who acts as the Executor or Administrator of a deceased person's estate, or who is the Trustee for the bank in a foreclosure sale, can ask the court to award him or her a fee based on the price obtained in the foreclosure sale or the value of the debts paid and the personal property in the estate.

b. In certain family law cases, the court may order one partner to pay some or all of the other's legal expenses. The court can make such an award in cases involving alimony, child support, custody and paternity, by way of example. It is important to remember, however, that the award of attorney's fees in such cases is not mandatory or automatic. It depends on a variety of factors, such as good faith, need, lack of adequate support, and so on. The courts see these awards of attorney's fees as a way to pay back or reimburse people for attorney's fees already paid or presently due. It is very difficult to retain an attorney from the outset based on the promise or hope of court-awarded attorney's fees at a later date. This is especially true because many times a person will not obey the court's order to pay the other party's attorney and so further court work may be necessary.

c. In some cases, a contract provides for payment of attorney's fees by one who breaks the contract. In such a case, the court will enforce the contract (if it is valid) and can award attorney's fees to the winning party from the breaching party if such a clause is inserted in the contract.

d. A final example of court-awarded attorney's fees is the "nuisance lawsuit" -- one that has no basis or justification. If the judge finds that a lawsuit is frivolous, groundless and without justification, an award of attorney's fees may be made by the court against the person bringing the suit. The same is true if it is a defense, counterclaim or answer that is frivolous.

10. Q. What if I can't afford an attorney?

A. First of all, talk to a legal assistance attorney. There may be a legal aid society or public defender office that can help you. You may be able to handle the case yourself, as with small claims court. The county attorney's office in many states can help obtain an initial order for child support for a small initial fee with further payments coming out of the child support awarded. Once child support is ordered, you can obtain help in enforcing payment from the Clerk of Superior Court through whom the payments are made, or you can ask the court to appoint a lawyer to enforce payment. It may be that you don't need a lawyer but need to be referred to another office, such as the installation housing office, the inspector general, the county health department or the district attorney. Just remember -- don't give up! See a legal assistance attorney as early as possible so he or she can listen to the facts and help you avoid or solve the problem.

11. Q. What if I have other questions about attorneys and their fees?

A. Never be afraid to ask such questions at your very first meeting with a civilian lawyer. You should always insist on signing a contract with the lawyer if you want the advantage of having your agreement in writing -- and be sure to read the contract before signing to make sure it sets out accurately your entire agreement. Feel free to "shop around" and compare various attorneys, but don't just shop for the lowest fee. The cheapest lawyer is not necessarily the worst or best, and the most expensive one may not be the right one for you. Be sure to consider such factors as location, accessibility, personality, time available and experience in your problem area. There are lots of lawyers in most communities. It is your job to find the right lawyer for your case.

## **MEMBERSHIP CAMPGROUNDS MAY PROMISE MORE THAN THEY DELIVER**

Camping with the family can be a lot of fun, especially if you can find a pleasant location. Many people have chosen to take their vacations in recreational vehicles and most states have lots of parks and other areas for these, too. If you are a camper or an RV owner, you may have been solicited to join a "membership campground."

### **WHY PEOPLE JOIN**

Those who buy into these private campgrounds don't acquire ownership interest in land. Instead, they pay charges for the right to camp at certain private locations for a specified number of years. Many of the member families say they joined because they were tired of crowded and unfriendly public parks. Others say they joined because of the amenities offered, such as tennis courts and showers.

### **HIGH-PRESSURE TACTICS**

Like the timeshare industry, the membership campground industry has been plagued by overly aggressive salespersons who make big promises they cannot fulfill. These campgrounds also frequently use the lure of expensive prizes, such as cars and boats, in order to get consumers to listen to their high-pressure pitch.

### **WHAT TO WATCH OUT FOR**

If you do end up listening to the sales pitch for a membership campground (often called a ranch or resort by the promoters), here are some things you should look out for:

Does the salesperson offer you lots of amenities, such as stables, clubhouses or swimming pools, with the promise that those will be built in the near future? If so, ask for a construction timetable and ask the salesperson to put all the promises in writing.

Too many consumers have believed that they would soon be riding horses and swimming in Olympic-size pools, only to be disappointed as the months drag on and no such amenities appeared.

## MEMBERSHIP CAMPGROUNDS

. Does the salesperson say or imply that you will be making a good investment? Some sellers will tell prospective customers that resort memberships now selling for \$7,000 sold for only \$5,000 a few months ago, for example. If you check with people who purchased earlier, you'll usually find that the sales price actually hasn't changed at all. However, by getting you to believe that the price has already gone up, it's easier to make you believe it will go up even more in the future.

. As in timesharing, the salesperson may try to win you over by promising that you can go camping in hundreds of other locations nationwide and may even promise special rates abroad. Be skeptical. Popular campgrounds and resorts fill up quickly and often have long waiting periods. Don't join a resort just for the privilege of exchanging for another.

. If the salesperson promises to help in reselling your membership, make sure that promise is in writing, too. And, as always, remember that any deal that's good TODAY ONLY should be avoided.

### FOR MORE HELP

If you need more help or information on this or other consumer problems, contact the Legal Assistance Office, or your nearest Attorney General Consumer Protection Office.

TAKE-1

**POWERS OF ATTORNEY**

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

1. Q. What is a power of attorney?

A. A power of attorney is a document that allows someone else to act as your legal agent. Thus, a power of attorney can be used to allow a friend to sell your car, to let your spouse ship your household goods or to authorize a relative to take your child to the hospital. It can also be used to sell or buy property. It can create valid and legal debts in your name or it can authorize a person to pay off your debts.

2. Q. Are there different kinds of powers of attorney?

A. Yes. The two types are general and special powers of attorney. A general power of attorney allows the person you name (or your agent) to do any and all things that you could legally do, from registering a car to selling a house. A special (or limited) power of attorney lists a particular act that the agent is authorized to do and limits the agent to that act. The agent can, of course, be authorized to do more than one legal act in a single special power of attorney.

3. Q. When does a power of attorney expire?

A. A power of attorney should never be made indefinite or permanent. The best course is to set a date for the power of attorney to expire, and this can be written into the power of attorney. That way, the power of attorney will be no good after the expiration date that you set unless, of course, you renew it by preparing a new power of attorney.

4. Q. What are some of the things a special power of attorney can do?

A. You can use a special power of attorney to allow someone to do almost all legal actions that you can do yourself. Thus, for example, you could prepare a special power of attorney that lets your designated agent:

- a. Buy or sell real estate;
- b. Purchase a car or sell your furniture;
- c. Sign your paycheck or withdraw money from your

- d. bank account;
- e. Admit your child to the hospital for necessary medical care;
- f. Ship or store your luggage and household goods;
- g. Sign your name to a lease or an agreement to connect utilities, such as electricity, gas, oil or telephone service;
- h. Cash or deposit tax refund check or transfer stocks and bonds.

These are just a few of the many things that can be done with a special power of attorney. All you have to do is prepare the special power of attorney with a specific description of what is the particular act or deed to be done (and who is the agent that you authorize to do it).

5. Q. Are there any things a power of attorney cannot do?

A. While a power of attorney will be accepted as valid for most purposes, in many states there are some items that cannot be accomplished by using a power of attorney because these actions are so personal in nature that they cannot be delegated to another. Thus, for example, a marriage ceremony or the execution of a will cannot be done by power of attorney. In addition, there are times when a certain form of power of attorney is required and none other will be accepted - an example is the special form of power of attorney used by the Internal Revenue Service when a person allows a friend or relative to cash an IRS refund check.

6. Q. All this sounds like a good deal - why doesn't everyone have a power of attorney?

A. A power of attorney can be very useful if you have one in effect when you need it. But a power of attorney can be abused as well as used; there can be disadvantages to having one as well as advantages. A husband who just separated from his wife might use the power of attorney she gave him to clean out her individual bank account. A well-meaning older person might give a power of attorney to a younger relative, only to discover that the relative squandered and spent the assets of the older person. A power of attorney always has the potential for being a very helpful or a very dangerous document for those reasons. The important thing to remember is that you are going to be legally responsible for the acts of your agent. Therefore, you must exercise great care in selecting the person to be your agent.

7. Q. What steps can I take to prevent improper use of my power of attorney?

A. There is no way to guarantee your power of attorney will not be misused. Here are some guidelines and precautions that will help prevent abuse:

- a. Never have a power of attorney unless you need one.
- b. If you feel you might need a power of attorney, have one prepared but don't sign it until you need it.
- c. Always put an expiration date on your power of attorney; never make a power of attorney that lasts indefinitely.
- d. Make sure your expiration date is for a fairly short period of time. While this will vary from one person to another, periods of one, two or three years are not uncommon on powers of attorney. Check the policy of the legal assistance office is to determine its policy on limiting durations of powers of attorney.
- e. Never use a general power of attorney when a special one will do.
- f. If you want to cancel or terminate a power of attorney before it expires, you can prepare and execute a Revocation of Power of Attorney. Give a copy of the revocation to any person that might deal with the person to whom you gave your power of attorney. In some states you may also record the revocation in the county register of deeds office where the original power of attorney was recorded or was to be used. Just remember that it is usually impossible to cancel effectively a power of attorney, since the safest way to do this is to get back all the copies and originals you have given to your agent, as well as all the photocopies that may have been made by banks, realtors, merchants, landlords and other people who are relying on the power of attorney you have signed.

8. Q. Are there any special requirements for powers of attorney?

A. A power of attorney must always be signed in front of a notary public. If you wish, it can be recorded at the county register of deeds office in location where it is to be used. As a general rule, however, a power of attorney does not need to be recorded in order to be effective.

9. Q. Does every business or bank have to accept my power of attorney?

A. No. Every business or bank is free to accept or not to accept a power of attorney. Some businesses or banks require that the power of attorney be recorded while others do not. Some banks will accept only a special power of attorney. The bottom line is you should check with the business or bank before obtaining or

using a power of attorney to be sure that it will be accepted.

10. Q. Does a power of attorney expire upon my death or mental incapacity?

A. A power of attorney expires on the death of the grantor (the person signing it) or of the agent named in it. Many people choose to have an additional clause in a power of attorney that makes provision for mental incapacity. In such a case, the power of attorney would usually state that it would survive beyond any mental incompetence of the grantor. In many states, such a power of attorney must be recorded at the county register of deeds if the grantor later becomes mentally incapacitated. You should remember, however, that a valid power of attorney must be signed while the grantor is sane and mentally competent.

11. Q. What if I have other questions or specific problems I want help in solving?

A. See a legal assistance attorney or a private attorney as soon as possible. Seeing a lawyer early may not only solve a problem you have; it may also resolve or avoid a problem in the future, on this or other unrelated subjects. Seeing your lawyer early is practicing "Preventive Law."

TAKE-1

**FAMILY MEMBER PRE-MOVEMENT CHECKLIST**

A project of the North Carolina State Bar's Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

This checklist should be reviewed periodically and **ALWAYS** prior to a TDY or deployment

**MEDICAL**

1. Are all the immunizations for myself and my family members up-to-date?
2. Do I know where my medical and dental records are kept?
3. Do I know where these records for my family members are kept?
4. Do I know how to get medical assistance if it is needed?
5. Do I have one or more reliable sitters for absences or emergencies?

**FINANCE**

1. Will I have my money available to me on a continuing basis during my sponsor's absence?
2. Has my sponsor initiated an allotment to be sent to me or directly to the bank monthly?
3. Will the allotment provide me with enough money to buy all the necessities needed to maintain a household?
4. If we are planning to leave the installation area, have we been saving for the move? [Neither military relief organizations nor America Red Cross is authorized to lend money for such a move.]
5. Do I know the address of banks where we have money?
6. Do I know the account numbers and types of accounts that we have?
7. Do I know the location of the bank books-checking and savings?
8. Do we have a safe deposit box? Do I know where the key is?

9. Do I know where each of our credit cards is? Are their numbers logged and kept in a safe place? Do I know the company address for each so I can notify them immediately of any loss?
10. Am I prepared to take complete control over our checking accounts, know the balance at all times, and never write a check unless I am certain of sufficient funds in the bank?
11. Do I know how to change the address to which an allotment is mailed? Request a change from the appropriate address below, and also file a change of address with your serving post office immediately.
- Army: Defense Finance & Accounting Service  
Military Pay Operations  
Department 21  
Indianapolis, IN 46249-0833  
Recommend calling instead of writing:  
(317) 542-2751
- Air Force: Defense Finance & Accounting Service  
DE/JFBB  
6760 E. Irvington Place  
Denver, CO 80279-3000
- Navy: Defense Finance & Accounting Service  
Cleveland Center  
1240 E. 9th Street  
Cleveland, OH 44199  
Recommend calling instead of writing:  
(216)-522-5301
- Marine Corps: Defense Finance & Accounting Service  
Kansas City Center (Code JEB)  
Kansas City, MO 64197-0001

12. Do I know all payments that must be made-to whom (account numbers, addresses, phone numbers) and when for the following:
- a. Mortgage/Rent
  - b. Telephone
  - c. Water
  - d. Electricity
  - e. Trash collection

- f. Insurance (life, property, auto, etc.)
- g. Taxes
- h. Gas/fuel
- i. Credit cards
- j. Other debts

13. Do I know whom to contact if my allotment check does not arrive?

- a. Give the check three or four days after normal arrival time; then,
- b. Contact appropriate military Community/Family Service Office if the check still has not arrived.

#### AUTOMOBILE/TRANSPORTATION

- 1. If the vehicle is financed, do I know the name and address of the loan company?
- 2. Do I have the title or know its location?
- 3. Do I have the vehicle's registration?
- 4. Do I have the vehicle's insurance policy?
- 5. Do I know the renewal date for the license plate?
- 6. Do I know when to renew the inspection sticker?
- 7. Am I insured to drive?
- 8. Do I have a valid car or truck state driver's license? When does it expire?
- 9. Is our car or truck in good operating condition and do I know where to go for repairs?
- 10. Do I have a duplicate set of all keys?
- 11. Can I make emergency repairs on the car if the situation arises (such as overheating, flat tire, dead battery)?
- 12. If I am not licensed to drive, have I made arrangements to have transportation available?

**LEGAL/ADMINISTRATIVE**

1. Are my family's identification cards up-to-date and valid until after the sponsor's return?
2. Do I know where and how to obtain new identification cards?
3. Has my sponsor executed a general power of attorney so I can take necessary action on important family matters during his or her absence?
4. Has my sponsor executed a special power of attorney so that I can cash his or her monthly check (if the check will continue to be sent to my address)?
5. Do I know where the general/special powers of attorney are kept?
6. Do I have birth certificates for myself and family?
7. Do I have a copy of our marriage certificate?
8. Do I have copies of any adoption papers? Do I know where they are kept?
9. Do I have a Social Security card?
10. Do I have copies of our federal and state tax records?
11. Do I know where all of our insurance policies are kept?
12. Do I know where any stocks, bonds or other securities that we own are kept?
13. Do I know where any deeds are kept?
14. Have I safeguarded all of our important papers?
15. Do my sponsor and I have up-to-date wills? Do I know where the originals are kept?
16. Is my sponsor's Servicemen's Group Life Insurance (SGLI) beneficiary designation appropriate for our family situation.

## IMPORTANT DOCUMENT FILE

It is very important for the military family to keep copies of important documents and other valuable information in a safe place. It is equally important that the wife and husband jointly organize this file so that each knows how and where to find the documents when they are needed.

Your sponsor should have most of this information...PLEASE SIT DOWN WITH HIM OR HER AND GATHER THIS INFORMATION AND THESE DOCUMENTS. THE HOUR YOU SPEND GOING OVER THIS WILL SAVE YOU TIME LATER ON. KEEP THE FOLLOWING DOCUMENTS IN A SPECIAL CONTAINER THAT YOU CAN DEFINITELY FIND IMMEDIATELY. At a minimum, the following documents should be included:

1. Marriage certificate.
2. Birth Certificates for all family members.
3. Citizenship papers, if any.
4. Adoption papers, if any.
5. Passports, if any.
6. List of Social Security Numbers of family members.
7. Shot records (up-to-date) for all family members.
8. Powers of attorney, if any.
9. Wills.
10. Insurance policies (both government and civilian)-with a list of companies, policy numbers, types of insurance coverage, addresses and phone numbers of agents or companies.
11. Vehicle titles, if any.
12. List of all members of immediate families with current addresses and phone numbers.
13. List of all credit cards and account numbers.
14. List of all bonds and stocks and where certificates are located.
15. Court orders relating to divorce, child support, custody, alimony or property division, if any.
16. Real estate documents-leases, deeds, mortgages and promissory notes, closing papers.

17. Copies of any sales or installment contracts and finance agreements.
18. List of bank accounts with types of accounts and account numbers.
19. Armed Forces identification cards for all family members 10 years of age or older. (Note that military regulations provide that ID cards will be issued for children under age 10 who reside with a single parent or dual military couple).
20. Nine (9) copies of your spouse's TDY and/or PCS orders. [If you must move by yourself, you will need extra copies of these orders. However, with these copies, you can have other made without cost to you by going to your sponsor's unit.]
21. Current addresses and telephone numbers of all members of immediate families of both you and your spouse. [Immediate family includes father, mother, children, brother(s), sister(s). You should have all other important telephone numbers you may need in case of emergency.]

**ALL ABOUT PROBATE**

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

1. Q. What is probate?

A. Probate is the procedure of settling the estate of a deceased person. The estate of one who has died consists of the property of that person upon death.

2. Q. Who is responsible for probating my estate?

A. If you have made a will, you have probably named such a person, called Executor, in that document. If you have no will, the court will appoint someone, usually the next-of-kin, to be the Administrator of your estate for this purpose.

3. Q. What are the duties of my Executor?

A. The duties of the Executor are the same as those of the Administrator. They include the obligations to:

- a. Safeguard the estate's property;
- b. Inventory the property;
- c. Submit accounts and inventories to the court as needed or required;
- d. Pay the debts and expenses of the deceased (including funeral and burial expenses as well as costs of last illness or outstanding medical bills);
- e. Pay any federal or state death taxes; and
- f. Distribute the estate to those named in the will or, if no will exists, to the next-of-kin.

4. Q. Who pays for all this?

A. Your estate does. In general, your estate is responsible for all your debts, bills and expenses. These must be paid before any remaining assets in your estate can be given to your next-of-kin or your heirs under the will. Your Executor has no duty to pay these costs out of his or her own pocket and is not normally personally liable for your debts. Your Executor has the duty to release enough of your assets to allow the payment of expenses such as taxes, credit card balances and hospital bills.

5. Q. If I am appointed as someone's Executor, do I get paid?

A. An Executor - or Administrator - can request the court to provide two types of compensation:

a. Direct reimbursement for out-of-pocket expenses, such as postage stamps, bank charges and mileage; and

b. Payment for services rendered as an Executor or Administrator unless the will directs otherwise.

The amount of this latter payment will vary, of course, depending on the amount of work done, the time spent on the estate, the complexity of the work and the size of the estate.

6. Q. Does my Executor have to pay a fee or post a bond to settle my estate?

A. There are various expenses necessary to settle an estate. Fees must be paid to the court upon filing and closing the estate. A bond is sometimes required, especially if there are minor children or an out-of-state Executor/Administrator involved. These costs are, of course, paid by the estate.

7. Q. Are my creditors notified of my death?

A. Your Executor/Administrator must place a legal notice in the newspaper for your creditors after the court has appointed him or her to handle your estate. The notice must:

- a. Give the name of the deceased and the name and address of the Executor or Administrator;
- b. Be published once a week for three weeks in a row in the locality where the deceased had his or her home; and
- c. State that all claims of creditors must be made within six months of publication of the notice.

Once this is done, the publisher prepares an Affidavit of Publication and this is put in the court file. Any claims not presented to the Executor or Administrator within these six months need not be paid under most state laws.

Those claims which are valid and which are presented within the six-month period, including debts and expenses known to the Executor or Administrator, must be paid out of the available funds in the estate.

8. Q. What are the inventories and accounts I must file as an Executor or Administrator of someone's estate?

A. Using North Carolina as an example, when you initially apply to the Clerk's Office for appointment, you will need to fill

out an initial inventory. This is so you can give a preliminary account or a rough estimate of the assets in the estate. Within the first three months after you are appointed, you must file the Ninety-Day Inventory, which is the first formal accounting of the assets in the estate of the deceased -- real estate, cars and trucks, furniture, pension benefits, bank accounts, jewelry and so on. If you have completely settled the estate within twelve months of qualifying as Executor or Administrator, you will then file the Final Inventory, listing the following:

- a. Amount of total assets as shown on the Ninety-Day Inventory you have already filed;
- b. Additional assets received by the estate since the filing of the Ninety-Day Inventory (with description and fair market value);
- c. Expenses, debts, taxes and bills paid by the estate; and
- d. Distribution of the estate to the heirs (how and to whom).

If you haven't completed settlement of the estate, you must file an Annual Inventory showing items a, b, and c, above. A simple estate can usually be closed in a period of 8-12 months.

9. Q. Can I get into the safe deposit box of the deceased?

A. Yes - the law provides that you can have access to the safe deposit box of the person whose estate you are settling, so long as you are accompanied by an official from the Office of the Clerk of Superior Court on your first visit. At that time, the official (usually a deputy or assistant clerk) will supervise the opening of the box, inventory the contents and turn the contents which belong in the estate over to you for safekeeping. The inventory is returned to the Clerk's Office for filing.

10. Q. How do I handle the money of the deceased?

A. You should immediately set up an "estate account" at a local bank as soon as you have been appointed Executor or Administrator. You can arrange this at any local bank, and there is a small charge for printing the checks showing your name, your title (Executor/Administrator), the name of the deceased and other information. Having a separate account is a step toward preventing the mixing or "commingling" of your own personal funds and those that belong to the estate. With the estate account set up, you can deposit or transfer the funds of the deceased into this separate account. Some items, such as paychecks, insurance premium refunds or employee death benefits, may be deposited directly into the estate account. In the case of other assets, such as bank accounts, certificates of deposit, stocks and bonds, you will need to obtain a tax waiver from the state Department of Revenue (if the item is worth more than a specified sum under state

law) to be able to transfer the asset into the estate account. The tax waiver application form is available from any local office of the Department.

11. Q. Are life insurance proceeds part of the estate?

A. For tax purposes, life insurance proceeds are counted as part of the taxable estate if the policy was owned by the deceased. You must account for the proceeds of such a policy on the tax return (state and, if necessary, federal) of the estate. On the other hand, only life insurance proceeds payable to the estate are listed on the inventory filed with the Clerk. Those policies and proceeds made payable to individual beneficiaries pass by contract, outside of the estate, directly to the named beneficiary.

12. Q. Once I have paid all the fees and expenses and accounted for all the property, how do I close the estate?

A. First you would prepare the applicable state Inheritance and Estate Tax Return if required and, if a large estate is involved, a Federal Estate Tax Return for the estate as well. A state tax return must usually be prepared, but federal law does not tax estates valued at less than \$600,000. The state Department of Revenue will furnish you with a form for estates in that state, upon payment of any taxes due, which certifies that the estate is cleared for closing. The next step is to distribute the estate among the heirs-at-law (if there is no will) or the designated beneficiaries (if a will has been admitted to probate). You should obtain a receipt from all heirs or beneficiaries stating that they have received their entire share of the estate of the deceased (signed, dated and witnessed). After you have distributed or divided the property, submit those receipts along with the Final Inventory to the Clerk's Office. You will also need cancelled checks or "paid receipts" for all expenses, fees and bills that have been paid. Once that Office is satisfied that you have accounted for all assets and expenses, the estate will be closed.

## REAL ESTATE BROKERS

If you are selling or buying a home, you may want to consider using a real estate broker. Although you are not required to use a broker, many consumers do. Real estate brokers may be able to provide information about real estate values, financing, and standard sales agreements. The following information may help you decide whether you want to work with one and, if you do, what services and terms you may want to arrange.

You can find real estate brokers through friends, advertisements, and the Yellow Pages. Both real estate "brokers" and real estate "salespersons" are licensed by the state, but salespersons must be supervised by brokers. The term "broker" here refers to both groups, but keep in mind that you actually may be dealing with the broker's salesperson.

Before selecting a real estate broker to help you sell or buy a home, you first may want to interview brokers from several firms. Ask them to provide you with the names and phone numbers of previous clients, in your neighborhood if possible, to call as references.

### SELLING YOUR HOME THROUGH A BROKER

If you decide to sell your home with the help of a broker, you will want to ask each broker a wide range of questions dealing with issues of marketing, negotiating fees, and drawing up a "listing contract." Below are some questions and ideas you might want to discuss with a broker:

#### What sales price would you suggest for my home?

To price your home realistically, you should ask the brokers you interview for the recent asking prices and sales prices of comparable homes in comparable neighborhoods. Be wary of a broker whose suggested asking price is substantially out of line with the suggestions of other brokers.

#### How would you plan to market my home?

Most consumers want their broker to place their home on the Multiple Listing Service (MLS). The MLS is a broker

## REAL ESTATE BROKERS

information network, often computerized, which publicizes homes for sale. Most brokers rely heavily on the MLS to select homes to show to potential buyers. The MLS also can help you and the broker set a price for your home because it provides current asking and sales prices of homes that are comparable to yours.

In addition to using the MLS, brokers usually advertise a home for sale through the newspaper and by holding open houses. You may wish to ask each broker you interview where and how frequently the broker would advertise your home, how frequently the broker would hold an open house, and what other marketing techniques he or she might use.

You also may wish to ask how each broker would assist a buyer in locating financing. You will want to know which lenders are offering the most attractive financing packages so that you or the broker can suggest them to potential buyers. You also may wish to discuss what seller-financing options you could offer to attract buyers.

### How much would you charge me?

You, as the seller, will probably pay a commission to the broker at settlement for finding a buyer for your home. Your own broker, however, may not receive the full commission. Typically, your broker will place your home on the MLS with an offer to split the commission with any other broker who finds the buyer. Many home sales involve two brokers who split the commission paid by the seller.

### Are you willing to negotiate a lower commission rate?

Although commission rates may appear to be relatively standard within your community, it is important to remember that commission rates are not set by law, and you may be able to negotiate a lower rate. For example, some brokers may accept a lower commission rate in order to get your business. Other brokers may agree to a lower commission in exchange for performing fewer services for you, such as reducing the number of newspaper advertisements and open houses. Some may agree to a lower rate if they themselves find the buyer for your home and do not need to split the commission with another broker.

You also may be able to negotiate an arrangement where the broker accepts a lower commission if the house is sold within a certain period of time. For example, you might agree to pay your broker a 6% commission if the broker finds a buyer

within 60 days, and a reduced commission if the broker takes longer than that to sell your home. In addition, in order to help finalize a sale, a broker sometimes will reduce his or her commission to narrow the gap between your minimum selling price and a buyer's offer.

What type of "listing contract" will you want me to sign?

You will be asked to discuss and sign a "listing contract" with your broker. This contract includes the terms of sale for your home (such as the asking price), your brokerage arrangements (such as what the broker will do for you and how much you will pay the broker), and the expiration date of the contract. Make sure that the services and terms that are important to you are written into your listing contract.

Generally, if you want your home placed on the MLS, there are two basic kinds of contracts you may enter into with a broker.

In an exclusive right-to-sell contract, you agree to pay your broker a commission no matter who finds the buyer - even if you find the buyer independently of a broker. This contract is preferred by most brokers.

If you know specific people who may be interested in buying your home, you may want to include a special "reserve clause" in this type of contract. This reserve clause would allow you to sell your property to any specifically-named person and would require you to owe either no commission or a reduced commission.

In an exclusive right-to-sell contract, your broker usually benefits regardless of who finds the buyer. However, you still may be able to negotiate a contract that is more favorable to you. For example, you may try to negotiate a lower commission, more extensive advertising, or other special terms and services in return for your agreement to sign an exclusive right-to-sell contract. You should be sure to have the negotiated terms written into the contract.

In an exclusive agency contract, you agree to pay your broker a commission if that broker, or any broker, finds the buyer. However, if you locate the buyer yourself, without a broker's help, you owe no commission, or, perhaps, a reduced commission. Although there are some restrictions on who may use the MLS and what types of listings will be accepted, you should be able to have your home placed on the MLS under an exclusive agency contract.

## REAL ESTATE BROKERS

Because an exclusive agency contract does not guarantee a broker a commission if the house is sold, some brokers may not be willing to enter into an exclusive agency contract or may not provide you with as much service under this type of contact. But some brokers may agree to your terms without cutting back on services. That is why it is important to shop for a broker who will meet your needs.

What other information will be included in my listing contract?

The asking price for your home will be included in any listing contract you enter into. Carefully set the asking price. If you set the initial asking price too high, you may turn away potential buyers.

During the term of your contract, you may lower your asking price. If, however, you raise the asking price without your broker's consent and then receive an offer at the original asking price, you may owe a commission - whether or not you accept the offer. That is because your broker will have fulfilled his or her contractual obligation to find a buyer who is willing to pay the price specified in your contract.

All listing contracts must specify a beginning and ending date. While brokers prefer as much time as possible to locate a buyer, you may wish to limit the contract period to 90 days, for example. You also may want to reserve the right to cancel the contract upon reasonable notice. These options allow you to hire a new broker if, for example, you are dissatisfied with the services you are receiving.

### BUYING A HOME THROUGH A BROKER.

If you are buying a home, you also may want to talk with several real estate brokers about your housing needs. This will help you determine which broker is best suited to assist you. You especially may want to ask a broker about some of the issues discussed below.

Whom do you legally represent - the homebuyer, the homeseller, or both of us?

If you are buying a home, you may believe - as many consumers do - that the broker you have chosen legally represents your interests. While this may be the case, it is

not necessarily so. Real estate brokers may represent the seller, the buyer, or both. However, according to most Multiple Listing Services, any broker assisting the buyer usually works under the seller's broker and owes primary allegiance to the seller rather than the buyer.

If you want to be sure that the broker represents your interests as a homebuyer, it is advisable that you obtain a written agreement or letter from your broker spelling out that relationship.

Whom the broker represents can be important to you. For example, if a broker showing you homes legally represents the seller, he or she is obligated to seek the highest possible price for the seller and thus may not be able to advise you, the homebuyer, what approximate lower price the seller may be willing to accept.

Or if, as a homebuyer, you tell a broker the true "top price" you are willing to pay for a home without having an agreement of confidentiality, such information might be passed on to the seller without your knowledge or approval. That could result in the seller asking for that higher price and your paying more than you otherwise might have paid. As a homebuyer, therefore, you should carefully consider whether you want to disclose confidential information to a broker who has not agreed to represent you.

**Will you agree to represent me as a "buyer's broker?"**

Any broker may agree to represent you, as the homebuyer, and some brokers are beginning to specialize in legally representing buyers. Having a "buyer's broker" may offer you some advantages. For example, a buyer's broker may be more motivated to spot problems with a home you are considering and may be able to obtain more favorable purchasing terms. Buyer's brokers may or may not charge you a fee. This is because a buyer's broker can legally share in the commission paid by the seller as long as you (the homebuyer), the homeseller, and the seller's broker agree to this. You can try to locate buyer's brokers by asking friends and looking for advertisements in your newspaper and the Yellow Pages.

**Will you offer me any special benefits or discounts?**

If you are buying - or selling - a home, you may want to consider looking for brokers who offer you special benefits. These may include: discounts for home furnishing, home repairs, moving services, rental cars, motels, or air travel;

## REAL ESTATE BROKERS

actual cash bonuses; or a promise to buy your home if it is not sold within a certain period. Of course, in choosing a broker, you will want to consider the broker's abilities, track record, and basic terms, as well as any special benefits.

### Complaints

Complaints about real estate brokers should be addressed to the state Real Estate Commission.

## **SECOND MORTGAGE FINANCING**

If you are like most homeowners, you probably have a first mortgage loan on your home. Typically, such loans are for 25 to 30 years, with the monthly payments adjusted so that the loan is paid in full at the end of the term.

As you make monthly mortgage payments and the value of the home increases, your interest in the property (called "equity") grows. After a while, some homeowners may wish to borrow against the equity in their home to get cash, to make home improvements, to educate their children, or to consolidate personal debts. Because such loans are in addition to the first mortgage on the home, they are commonly called "second mortgage" loans.

Second mortgage loans are different from first mortgages in several ways. They often carry a higher interest rate, and they usually are for a shorter time, 15 years or less. In addition, they may require a large single payment at the end of the term, commonly known as a balloon payment.

Traditionally, second mortgage loans are offered with a fixed loan amount and a predetermined repayment schedule. Some lenders now offer lines of credit that allow you to obtain cash advances with a credit card or to write checks up to a certain credit limit. These often are called "home equity lines" because the equity in your home is collateral for the amount of credit you request. As you pay off the outstanding balance, you can reuse the line of credit during the loan period.

This factsheet answers some common questions people ask when they begin shopping for a second mortgage or home equity loan. It discusses choosing a lender, the meaning of some mortgage terms, costs, disclosure documents, and contacts for resolving problems.

### **How do I Choose a Lender?**

When you are looking for a lender, shop around and make comparisons. Interest rates, repayment terms, and origination fees may vary substantially. Ask your local banks, savings and loans, credit unions, or finance companies about their loan terms. Although you will want to select the lender who offers you terms most suited to your needs, be sure to ask and compare the annual percentage rates (APR) because they will give you the total cost of the loan, including financing charges.

## **FINANCING, SECOND MORTGAGE**

If you have not done business with the lender before, or if the lender is unfamiliar to you, you may wish to ask your local Better Business Bureau or consumer protection office if they have any complaints against the lender.

### **How Long Will I Have to Repay the Loan?**

Some second mortgage loans may extend for as long as 15 or 20 years; others may require repayment in one year. You will need to discuss the repayment terms with the lenders and select one who offers terms that best suit your needs. For example, if you need to borrow \$20,000 to make repairs on your home, you may not want a loan that requires you to repay the entire amount in one or two years because the monthly payments may be too high.

### **Will My Interest Rate Change?**

If you have a fixed-rate loan, the interest rate is set for the life of the loan. However, many lenders offer variable rate mortgages, also known as adjustable rate mortgages or ARMs. These provide for periodic interest-rate adjustments. If your loan contract allows the lender to adjust or change the interest rate, be sure you understand when the lender has the right to change the interest rate, whether there are any limits on how much the interest or payments can change, and how often the lender can change the rate. You also should know what basis the lender will use to determine a new rate of interest.

### **How Much Will My Monthly Payments Be and Will They Pay Off the Loan?**

Be sure you understand how much your monthly payments will be and what they cover. Your lender should be able to give you this information in advance. With some loans, you will be required to make monthly payments on the principal and interest. With other loans, you may be required to pay interest only on the borrowed amount; in these loans, your monthly payments will not reduce the principal amount of the loan. With such a loan, you will be required to pay back the entire borrowed amount at the end of the loan period. These loans are popularly known as "balloon loans." If your loan has a balloon payment, you should consider how you will arrange to repay the entire amount when it becomes due.

On "home equity lines," the lender does not have to give you the exact amount of the monthly payment, but must explain how it is figured. This is because the borrowed amount will vary and your outstanding balance will change if you use the

## FINANCING, SECOND MORTGAGE

line of credit. However, if your monthly payment term is 5% of the outstanding balance and your outstanding balance is \$5,000, your minimum monthly payments would be \$250.

### Will I Have to Pay Any Fees to Get This Loan?

Many companies will charge a fee for lending you money. The fee is usually a percentage of the loan and is sometimes referred to as "points." One point is equal to one percent of the amount you borrow. For example, if you were to borrow \$10,000 with a fee of eight points, you would pay \$800 in "points." The number of points lenders charge varies, so it may be worthwhile to shop around. If the fee seems too high, you may be able to bargain for or find a lower fee. Be sure to get the amount of the fee in writing before you take the loan.

Many states limit the amount of fees a lender may charge on a second mortgage loan. You may want to check with your state's consumer protection office or banking commissioner to determine whether there is a limit in your state.

### What Should I Get in Writing?

If your loan is primarily for personal, family, or household purposes, the lender is required to give you a federal Truth in Lending disclosure form before you sign the customary loan documents, such as a note or deed of trust. This Truth in Lending form will tell you the actual cost of the loan. It includes the annual percentage rate, the finance charge, and the fees included in the loan. For "home equity lines," your lender also is required to send you a periodic statement, usually monthly.

The lender also is required to give you a notice of your right of rescission. The right of rescission gives you three business days after signing for the loan and receiving the Truth in Lending Act disclosures to reconsider whether you want to take the loan. For additional information about the right of rescission, write the FTC for its free FTC factsheet, "Getting a Loan: Your Home as Security."

If your lender makes any promises, such as saying you can "automatically" get the loan refinanced at the end of the term, be sure your lender puts these promises in writing. In this way, you may avoid any future disputes.

Since November 1989, lenders are required to disclose a number of items of information about home equity loans to applicants. They must tell you that such credit is secured

## FINANCING, SECOND MORTGAGE

by your dwelling and that failure to make payments could result in loss of the dwelling. Lenders must disclose to you if they have the right to make you pay the entire loan balance at one time, known to the banking industry as accelerating the outstanding balance. Federal law allows this to happen only under certain circumstances, such as when you fail to make loan payments in a timely manner.

### What Should I Do if I Have a Problem?

If you ever have a problem making your loan payments, talk to your lender as soon as possible. Some lenders will work with you to arrange a temporary payment plan. Also, call the lender if you have any questions about your loan.

However, if you have problems with your lender, you may want to contact your state, county, or local consumer protection office. If they cannot help you, they can refer you to the office that can.

The Federal Trade Commission is responsible for enforcing laws such as the Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, and the Fair Debt Collection Practices Act. It also provides free factsheets explaining these laws. For these or credit-related publications, such as Escrow Accounts for Home Mortgages, Using Ads to Shop for Home Financing and Refinancing Your Home, write to: Public Reference, Federal Trade Commission, Washington, DC 20580.

If you believe your lender may be violating a law that the FTC administers, you can send complaints or questions to: Division of Credit Practices, Federal Trade Commission, Washington, DC 20580. Although the FTC cannot resolve individual consumer disputes, it can take action if there is evidence of a pattern of deceptive or unfair practices.

## SELLING YOUR HOME WITHOUT A BROKER

This pamphlet is designed to assist you to sell your home without the assistance of a real estate broker. Obviously, your situation may have some particular aspects that will call for appropriate modifications in the suggested sales techniques. Therefore, please consider these suggestions as general guidelines.

1. No one should be more effective at selling the house than you. No one knows and cares for it more than you. Therefore, you are its best spokesperson.

2. Answer honestly any questions posed by a potential purchaser. Generally, you need not disclose information unless you are asked. False representations that are an inducement to buy, however, can result in liability even after the closing on the purchase and even if such representations are oral and are not put in writing.

3. Prior to any attempt to sell the house, make sure that it is clean and neat. It might be appropriate to have a friend whose opinion you respect look over the house and give you objective suggestions on how to improve your house's image without major expenses. A simple rearrangement of some furniture or the addition of a few indoor plants or flowers could make a big difference. Consider the situation as if you were a buyer. Touch-up painting, cleaning the carpet, and removing damaged furniture can, at small expense, greatly increase the saleability of the house and its market value. Make sure the yard is well kept, fertilized, and watered. These improvements should be made before the house will be appraised to determine the price that you should ask or for the potential purchaser's borrowing purposes.

4. Before undertaking to sell your house, gather the following information:

\*The estimated annual real estate taxes or the taxes for the prior year.

\*The heating and cooling costs for the coldest and warmest months.

\*The schools that the children will be attending.

\*The square footage of the house and room dimensions if possible. (However, do not stress room dimensions if the

## SELLING YOUR HOME WITHOUT A BROKER

disadvantages would apparently outweigh the advantages. For instance, it is doubtful that an extra large family room would outweigh the negative impact of very small bedrooms.)

5. Place a tasteful classified or display advertisement in the local newspaper. A classified advertisement is less expensive, but more easily overlooked. A display advertisement will permit you to run a picture of the house with the ad. The picture should be taken in the Spring or early Summer when the lawn is green and flowers are in bloom. Indicate in the ad any limitations on when the house may be seen.

The last three words of your advertisement should read "No brokers, please." The occupation of real estate brokers is the sale of real estate. Therefore, when they learn that an owner wishes to sell his or her home, they try to obtain a listing. Do not be offended by their telephone calls since they are only trying to list and sell your house in order to obtain a commission. The final words in the advertisement indicating that you do not want brokers to contact you will reduce the number of telephone calls that you will receive from real estate salespeople. On the other hand, some brokers may call and tell you they have a buyer to present to you if you sign a listing agreement with them. If you sign and the "buyer" does not buy, the broker still has you on the hook. The better way to handle such calls might be to suggest that you will pay a reduced brokerage commission, for example, 3 1/2 percent, if the broker brings you an acceptable offer and the deal closes. If the broker does in fact have a buyer, he or she may be willing to accept the reduced commission instead of walking away, since it would be a relatively easy commission to earn. If he or she does not have a buyer, you have lost nothing. The reduced commission approach is probably a gamble worth taking.

6. Place a sign in the front yard indicating that the house is for sale. Give your telephone number and state: "Inquire within," rather than the more common statement "By appointment only," because often potential buyers are short of time, are from out-of-town, or have already looked at other houses in which they are interested. The fact they must note your telephone number and go home to call for an appointment may cause them not to call at all. Also, while people are driving around, looking for a potential house, they are in the mood to purchase. The need for an appointment tends to stifle this impulse to buy.

The provision that the potential purchaser can stop at any time to look at your house is not as great a burden as it

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may seem. Most people are reasonable. If they stop at an inconvenient time, such as during a meal, they will understand that the house will not be as neat as it would have been had they given more notice.

7. Depending on the price of the house, the asking price should be several thousand dollars more than what you are willing to accept. The purchase of a used house is much like the purchase of a used car. The purchaser does not want to pay the asking price; he wants to feel that he has obtained a bargain. This is accomplished by offering you less than your original price. Typically, buyers will be willing to pay more than the first price they suggest; therefore, do not automatically accept the first price offered.

8. If the purchase is other than for cash, determine whether the purchaser will be obtaining a conventional loan, or an FHA or VA guaranteed loan. In FHA and VA loans, there are discount points as a result of the difference in interest rates between the conventional rate and the government guaranteed rate that the seller must pay. Therefore, the price of the house must reflect the additional cost to you in the form of "points". To avoid a problem later on, the sales contract should specify the type of financing.

9. Typically, certain items of personal property remain with the house. They include wall-to-wall carpeting, built-in appliances, television antennas, fireplace screens, light fixtures, and drapes. If for any reason you intend to take these items with you, be sure to inform the purchaser and include the fact in the contract.

10. Certain costs will be incurred whether you use a real estate broker or sell the property yourself. The main expense will be for title insurance. Title insurance premiums are based upon the price of the house and are usually paid by the seller.

11. Most purchasers will want their purchase contract conditioned on their qualifying for a loan; if they do not receive one, the contract is void and their deposit must be returned. In addition to the time required to check on the purchaser's credit and earnings, loan approval may also be contingent upon the purchaser's sale of his or her present home. These "chain sale" arrangements frequently take longer than a normal sale and must be coordinated. As a result, you may want to consider accepting a "back-up contract," which allows you to take an offer from a second purchaser if the first offer falls through.

## SELLING YOUR HOME WITHOUT A BROKER

12. Finally, do not panic if you do not sell your home immediately. Most people who initially attempt to sell their homes themselves and then turn to a broker have not allowed the market sufficient time. Seldom does a house sell within the first few days after it is advertised. In the event that you decide to consider the use of a broker, shop around, and consider recommendations from friends and neighbors before making your selection. You may wish to review the Sunday ads and visit several of a broker's open houses to judge the broker's marketing expertise for yourself.

13. Once you sell your home you may be liable for the payment of federal and state taxes based on the amount of "gain" you received (how much profit you made on the sale of the house). Tax on part or all of the gain from the sale of your principal home may be postponed. If you buy a new home, and the purchase price of the new home is at least as much as the adjusted sales price of the old home, you may be able to postpone the tax on all the gain from the sale. If you do not buy a new home, or if the purchase price of the new home is less than the adjusted sales price of the old home, you will be subject to tax on some or all of the gain unless you satisfy certain requirements for exclusion of gain. Your gain on the sale or exchange of your home is not taxed at the time of sale if, within 2 years before or 2 years after the sale (if sold after July 20, 1981), you buy and live in another home that costs at least as much as the adjusted sales price of the old home. If you are on active duty, the replacement period after the sale of your old home is suspended. The suspension applies only if your service (under a call or order for an indefinite period or for more than 90 days) begins before the end of the 2-year period. Generally, the total period of time between the sale and the date upon which you must occupy your replacement home cannot exceed 4 years including any period of suspension. But up to 8 years may be allowed in certain cases where an overseas assignment is involved and upon return from overseas assignment you are required to live on an installation in military housing.

14. If you have questions or problems with regard to the sale of your home, contact the legal assistance office for an appointment with an attorney.

TAKE-1

SEPARATION AGREEMENTS

A project of the North Carolina state Bar's special Committee on Military personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

1. Q. Do I have to have a separation agreement?

A. No law requires a separating couple to execute a separation agreement, but it is a wise idea if there are debts, children, support claims or property involved and the parties want to settle these matters in writing.

2. Q. What is a separation agreement?

A. A separation agreement is a contract between a husband and wife in which they resolve such matters as property division, debts, custody and support when they separate from each other.

3. Q. Who prepares a separation agreement?

A. It is best to have your own attorney prepare it for you. The separation agreement is not valid unless both parties have signed and their signatures are notarized. Never try to prepare such a complex and important document yourself; this is a job for a specialist.

4. Q. Can we divide our property in a separation agreement?

A. Yes. A couple that is separating can agree on a division of property in their separation agreement, and that agreement will be binding on them. The property to be divided consists of real property (such as land and the buildings on it), tangible personal property (cars, jewelry and furniture, for example) and intangible personal property (such as bank accounts, stocks and bonds, vested pensions and life insurance).

5. Q. Does my spouse have to sign a separation agreement?

A. No. An "agreement" means that both parties sign voluntarily. You cannot compel your spouse to sign a separation agreement or to agree to the terms you wish to impose on him or her in the agreement.

6. Q. Does a separation agreement help me to get a divorce?

A. A separation agreement is not "proof" that you have been living separate and apart from your spouse. It does not make

divorce in North Carolina, for example, easier or more difficult to obtain. Other states may have different provisions in their laws which make divorce faster or easier if there is a separation agreement.

7. Q. Can our separation agreement settle who would claim the tax exemption for our children?

A. Yes. The 1984 Tax Reform Act allows the parties to agree as to who can claim the children as exemptions for income tax purposes. Without a written agreement, the parent who has physical custody of the child for more than half the year will get the dependency exemption.

8. Q. What are the factors I should consider in transferring the exemption?

A. Consider these issues:

a. Should the dependency exemption be "traded", instead of given, to the noncustodial parent in exchange for an increase in child support? Even a small increase in child support would help offset the tax increase paid by the custodial parent, and the other parent can better afford such an increase due to the taxes he or she saves by claiming the exemption on federal and state tax returns.

b. Should you alternate the tax exemption between parents? For example, the father could claim the exemption in even-numbered years (1990, 1992, 1994, and so on) and the mother could do so in odd-numbered years. Or the father could claim one child and the mother could claim the other. Such alternation would lessen the impact of higher taxes on the custodial parent.

c. Should you condition the transfer on the noncustodial parent's regular and full payment of child support? Instead of transferring the exemption permanently without regard to payment of child support on time, some custodial parents agree to transfer of the dependency exemption only if the other parent is current (not in arrears) on child support payments by December 31 of each year.

9. Q. Can I get my spouse for contempt of court if he or she breaks the promises in the separation agreement?

A. No. It is not contempt of court to violate a separation agreement unless the agreement has been made a part of a court order. Contempt of court is the failure to obey a court order without legal justification. You may, however, sue your spouse for breach of contract if he or she violates the separation agreement.

10. Q. Will a separation agreement free me from paying debts for which I have signed along with my spouse?

A. No. A separation agreement is a contract between spouses. It cannot bind third parties (such as banks or finance companies) that have not signed it. If, however, your spouse promises to pay a bill and then breaks that promise, resulting in your having to pay, you can then sue your spouse for breach of contract for the amount of money you had to pay.

11. Q. Will a separation agreement stop my spouse from hassling me?

A. While separation agreements usually have a nonharassment clause in them, you should understand that no piece of paper - be it agreement or court order - is going to stop a person from doing something he or she wants to do. If the problem is one of physical violence, a court order would be better than a separation agreement and could be used to punish the wrongdoer if he or she violated the order. If there is only an agreement, a lawsuit for breach of contract is one possible remedy for breaking the promise of not hassling each other.

12. Q. Is a court bound by what we put in the separation agreement about our children?

A. No. The terms you include for child support, custody and visitation can always be modified by the court in the best interests of the children. In the absence of proof to the contrary, however, there is a presumption that the terms concerning the children in your agreement are fair, reasonable and necessary for the best interests and welfare of the children.

13. Q. Can the court modify the terms we include in a separation agreement concerning ourselves?

A. Unlike the terms concerning children, which are always modifiable by the court, the terms that pertain to adults cannot be modified by the court except in very limited circumstances. The court can overturn a separation agreement if it was signed due to fraud, coercion, ignorance or lack of mental capacity. In most cases, however, this is difficult to prove.

14. Q. Can we provide for college education of our children in a separation agreement?

A. Although in some states, judges cannot order you to pay child support for your child in college, you may make provision for college expenses in a separation agreement and it will become a binding, enforceable contract which the court can require each of you to perform. Since college is less of a luxury and more of a necessity these days, it would be a good idea to consider

whether you want to provide in writing for your child's/children's college education.

15. Q. What points should we remember in deciding about college expenses?

A. Here are some of the items that a good separation agreement will address:

a. How long should the obligation last? 4 years? 4 1/2 years? Until the child attains age 23? Some termination point or date should be set.

b. What costs will be covered? The usual ones are room and board, books, tuition and fees. Some parents also agree on a modest monthly allowance for spending money for the child.

c. What are the expenditure limits? Few parents want to agree to finance a college education for a child at any college or university. The cost of some private colleges and universities would bankrupt the average soldier. It is reasonable to put a ceiling or "cap" on the college expenses, such as by specifying that the maximum shall be "the then-prevailing rate at State University" or some other nearby public institution. Such a provision is fair to everyone and does not force either parent to go broke financing a college education.

d. What other limits do you want to set? For example, some agreements require that the child be attending an accredited institution, in pursuit of a generally recognized undergraduate degree, on a full-time basis, while maintaining at least a "C" average.

16. Q. Should we provide for alimony in our separation agreement?

A. Alimony is spousal support - it is money paid by one spouse to the other to help with support, maintenance and living expenses. It is not the same thing as child support. If the two of you have agreed on some measure of temporary or permanent alimony, you should definitely put that in the separation agreement. Such a provision might state, for example, that the husband shall pay the wife alimony of \$500 per month until he or she dies or until she remarries, or it could state that the wife shall pay the husband alimony of \$100 per month for a total of sixty (60) months, at which time it will terminate forever. These are just examples - your attorney will advise you about the applicability of alimony in your particular case.

17. Q. Is alimony tax-deductible?

A. If the agreement is drafted properly, the alimony can be made to be deductible for the payer and therefore taxable to the payee. It is also acceptable to make the alimony nontaxable to the payee if it is nondeductible for the payer. This is a particularly important term and it should be spelled out clearly in the agreement how the alimony payments will be treated for tax purposes.

18. Q. When does alimony end?

A. The usual times alimony ends are at the death of the husband, the death of the wife or the remarriage of the payee/recipient (usually the wife). Sometimes clients have a provision added to the alimony terms in a separation agreement that terminates alimony at either party's death, upon the remarriage of the recipient or at such time as the recipient starts living with an unrelated person of the opposite sex on a regular cohabiting basis as if they were husband and wife.

19. Q. What should we do if we have agreed that no alimony will be paid?

A. It is always best to put such a term in the agreement. Don't just leave it out or let the agreement be silent on this issue. This waiver of alimony is such an important term that it should be clearly spelled out in the agreement so there is no later misunderstanding.

20. Q. How do I know if I am entitled to alimony?

A. Your attorney who prepares the separation agreement will explain alimony to you. In some states, for example, alimony is only granted by the court if:

a. You file a lawsuit requesting alimony;  
b. You are the innocent or injured spouse;  
c. You are financially dependent on the other party or in need of support from him/her;

d. The other party is the supporting spouse, that is, he or she is able to provide reasonable spousal support to you; and

e. You can prove that the other party has committed acts that constitute a ground for alimony, such as adultery, abandonment, cruel and barbarous treatment, personal indignities (or "mental cruelty"), malicious turning out-of-doors, drug or alcohol abuse, and so on. An absolute defense to an alimony case exists when the parties have waived alimony in a separation agreement, when a divorce has been granted before an alimony claim is asserted in court, or when the dependent spouse has committed adultery.

21. Q. How much alimony should I get?

A. This question is impossible to answer. Not all states have guidelines for alimony, so there is no way of predicting what the court would have done to set an alimony award if the case had gone to court. Alimony awards of \$300-500 per month are not uncommon, and some soldiers who make a great deal of money (either by being in the higher enlisted/officer grades or through outside income, such as rental properties) could pay as much as \$1000 per month alimony in certain cases. Amounts above this figure are relatively rare. The best way to figure how much alimony a client needs is to calculate the difference between his or her reasonable monthly expenses and his or her current income, and then to compare this figure to the difference between your spouse's income and his or her reasonable monthly expenses. Your gap is "unmet needs" and should be equivalent (under ideal circumstances) to the "extra" money your spouse has left over from his or her paycheck after your spouse pays for his or her own reasonable monthly expenses. Since these "gaps" seldom exist in reality and everyone is usually spending a lot more than he or she is making, it is often a question of haggling, discussion, bargaining and horse-trading as to how much alimony should be paid in any individual case.

22. Q. How should we divide our property in the separation agreement?

A. Once again, the answer to this question depends on the advice given to you by your attorney. Depending on the state involved, different rules may apply for dividing property or for deciding what property is divisible by law. In North Carolina, for example, there is a presumption that all property acquired during the marriage is divisible on a 50-50 or equal basis. This is presumed to be fair. Other divisions, such as 60-40 or 75-25 are certainly legal if the parties agree that the division is fair and equitable. The property that is divisible is called marital property - with certain exceptions, this is anything acquired during the marriage. The exceptions are separate property, that is, property that cannot be divided by the court and belongs to only one party as his or her exclusive possession. Examples of separate property may be (depending on the state):

- a. Pre-marriage property of one spouse;
- b. Property acquired by gift or inheritance;
- c. Nonvested pension rights; and
- d. Business or professional licenses.

Except for these items, everything else owned by either or both of the parties may be considered marital property if it was obtained during the marriage. The title to the property - that is, whose name is on the deed or title - generally does not matter

so long as it was acquired during the marriage and does not fit into one of the above exceptions.

23. Q. What about pensions and retirement rights - are they divisible?

A. Yes. Federal law allows the division of military pensions to the extent that state law so provides. This law is called the Uniformed Services Former Spouses Protection Act. It was passed by Congress in 1982 to make sure that military pensions are not exempt from division just because they are set out in the federal statutes. For more about military pensions, please see the TAKE-1 handout on the Uniformed Services Former Spouses Protection Act (USFSPA) that is available at this office. In addition to military pension rights, many states allow private pension plans to be divided. Your attorney should explain this to you, along with the requirement that the pension plan be vested under state law in order to be divisible. Often a spouse's pension rights is the most valuable asset of the entire marriage, and this should certainly be studied in doing a separation agreement. If there is to be no division, the agreement should so specify. If the decision on pension division is to be put off or deferred because there is no present agreement, that also should be stated clearly. Make sure your agreement is very specific and plain in this area as to your intent on dividing the pension - a poorly worded agreement may be challenged as vague and unenforceable.

24. Q. Do we also divide our debts in the agreement?

A. You should set out a schedule for who pays what debt in your separation agreement, including the creditor's name, account number, purpose of the debt, approximate balance and monthly payment amount. This will not stop the creditor from suing both, or either, of you if payments are not made by your spouse and both of your names are on the obligation, but it allows you to ask the court to hold your spouse and not you accountable for the debt as set out in the agreement.

25. Q. How should we divide our debts?

A. There is no single "right" answer to this question. In one case, the husband may take on payment for all the debts because his is the sole source of income in the family or because he created the debts in the first place. In another case, the wife may take over certain debt payments for things she charged or purchased or for things that she is being given in the property division. For example, if the husband is getting the station wagon and the wife is getting the washer/dryer combination, it might seem fair that each should assume the debt payment for the items he or she is receiving.

26. Q. I want to make sure I can date after we get the separation agreement signed. Can I have my attorney put in a dating clause?

A. There is no such thing as a "dating clause" in separation agreements that allows adultery. Any sexual relations with a person who is not your spouse is adultery in the eyes of the law, regardless of the words in a separation agreement. There are very serious criminal and civil consequences for adultery, and so no "dating clause" will serve to make legal something that is illegal. Most separation agreements do, however, contain a clause that allows each spouse to be left alone as if single and unmarried, and forbids each spouse from harassing, molesting or interfering with the other.

27. Q. Should we also provide for how we file for taxes in the agreement?

A. Yes. This is a very important provision which can save you and your spouse a lot of money in taxes if prepared properly. A good example would be a clause that required the parties to file jointly so long as they are eligible to do so (usually up until the year they are divorced) and to divide the refund or liability for taxes in a specified way, such as 50-50, or 75-25, depending on the incomes of the parties.

28. Q. Can a single attorney do the separation agreement for me and my spouse?

A. It is best to have two attorneys involved, one to advise each partner. In this way, the husband and the wife both know that they have received independent legal advice for their individual situation from a lawyer who does not have a conflict of interest in trying to represent two clients with different goals and needs.

## SERVICE CONTRACTS

If you are buying a car, major appliance, or audio/video entertainment component, you may be offered a service contract. To many consumers, buying a service contract is like buying "peace of mind" from repair hassles. An estimated 50% of all new car buyers, and many used-car and major appliance buyers, purchase service contracts. The cost can range from \$50 to \$500 depending on the length and amount of coverage provided. Some consumers may, however, be paying for more protection than they need.

Before you buy a service contract, consider the following:

What does the service contract offer? A service contract, like a warranty, provides repair and/or maintenance for a specific time period. Warranties, however, are included in the price of the product, while service contracts cost extra and are sold separately.

What will the service contract give you that the warranty will not? Before purchasing a service contract, make sure you know the extent of your warranty coverage. Carefully compare the warranty coverage with the coverage offered by the service contract to decide if the service contract is worth the additional expense. For more information about warranties, write for "Warranties," a free brochure published by the Federal Trade Commission, Washington, D.C. 20580.

For what costs may you remain liable even if you purchase a service contract? You may have other expenses after you buy a service contract. Service contracts, like insurance policies, often have deductible amounts. Or, you may be charged each time the item is serviced. Some expenses are limited or excluded. For example, auto service contracts may not completely cover towing or rental car expenses. In addition, you also may have to pay cancellation or transfer fees if you sell the covered product or wish to end the contract.

What is covered by the service contract? A service contract may cover only certain parts of the product or specific repairs. Read the contract carefully and, if it does not list something as specifically covered, assume that it is not. Service contracts do not cover repairs resulting from misuse or failure to maintain the product properly. Also, you may be obligated to take certain action, such as notifying the company of problems, to insure that the service contract is not voided.

## SERVICE CONTRACTS

Where can you get service? If the service contract is offered by a local retailer or dealer, you may be able to get only local service. Consider the possibility that problems may develop while you are traveling or after you move away from the area. This is especially critical for military personnel and their families. Few service contracts provide for assistance when products are moved to overseas locations. Service contracts on domestic cars, for instance, may be useless if owners take them overseas.

Who is responsible for the contract? The Federal Trade Commission often receives letters from consumers who ask what they can do about a service contract company that has gone out of business and cannot repay claims. Unfortunately, there is little recourse available to these consumers. The best way to avoid this situation is to make sure, before you sign a contract, that the company is reputable and has insurance.

Can you purchase a service contract after you buy the product? You may be better able to decide if you need a service contract after you have owned the product for some time. Consider waiting until your warranty period expires to buy a service contract.

TAKE-1

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

INTRODUCTION:

The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), as amended, was passed by Congress to provide protection to persons entering or called to active duty in the U.S. Armed Forces. Reservists and members of the National Guard (when in active federal service) are also protected under the SSCRA. The protection begins with the date of entering active duty service and terminates upon release from active duty.

QUESTIONS AND ANSWERS:

1. Q. Can a service member get out of a lease or rental agreement?

A. Yes - a lease covering property used for dwelling, professional, business, agricultural or similar purposes may be terminated by a service member. Two conditions must be met:

- a. The lease/rental agreement was signed before the service member entered active duty; and
- b. The leased premises have been occupied for the above purposes by the service member or his or her dependents.

2. Q. How does the service member go about terminating the lease?

A. To terminate the lease, the service member must deliver written notice to the landlord after entry on active duty or receipt of orders for active duty. Oral notice is not sufficient. The effective date of termination is determined as follows:

- a. For month-to-month rentals, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example: if rent is due on the first of the month and notice is mailed on 1 August, then the next rent payment is due on 1 September. Thirty days after that date would be 1 October, the effective date of

termination.

- b. For all other leases, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example: if the lease calls for a yearly rental and notice of termination is given on 20 July, the effective date of termination would be 31 August.

3. Q. Can I get a refund of security deposit or prepaid rent?

A. If rent has been paid in advance, the landlord must refund the unearned portion. If a security deposit was required, it must be refunded to the service member upon termination of the lease (however, if the premises were damaged by the service member, an appropriate amount of the deposit may be withheld for repairs). The service member is required to pay rent only for those months before the lease is terminated.

4. Q. Can I stop an eviction action by my landlord?

A. If the property is rented for \$1,200 per month or less, you may ask the court to delay the eviction action for up to three months. The court must grant the stay if you request it and can prove that your ability to pay was materially affected by either your military service or your spouse's military service.

5. Q. Does the SSCRA apply to time payments or installment contracts?

A. Service members who signed an installment contract before active duty for purchase or lease with intent to purchase real or personal property will be protected if their ability to make the payments is "materially affected" because of active duty service. Remember-

- a. The service member must have paid, before entry into active duty, a deposit or installment payment under the contract.
- b. If the service member is not able to make payments because of his or her military duty, the SSCRA applies.
- c. The vendor (seller) is thereafter prohibited from exercising any right or option under the contract, such as to rescind or terminate the contract or to repossess the property, unless authorized by a court order.
- d. The court may determine whether a service member's financial condition is "materially affected" by

comparing the service member's financial condition before entry on active duty with his or her financial condition while on active; other factors may also be considered.

6. Q. What about my credit cards - can I stop paying on them?

A. No - you are still responsible for your debts after entry on active duty. Your obligation to pay your debts is unchanged by military service.

7. Q. What about the interest rates on my debts and mortgage payments - do they go down when I enter military service?

A. Yes. When an obligation was incurred before entry on active duty, the interest rate goes down to 6%, unless the creditor (bank, finance company, credit card issuer, etc.) can prove in court that the member's ability to pay was not materially affected by military service. The terms "interest" includes service charges.

8. Q. Are there protections against mortgage foreclosures?

A. The SSCRA protects service members against foreclosures of mortgages, deeds of trust, and similar security devices, provided the following conditions are met:

- a. The relief is sought on an obligation secured by a mortgage, deed of trust, or similar security on either real or personal property;
- b. The obligation originated prior to entry upon active duty;
- c. The property was owned by the service member or dependent before entry on active duty status;
- d. The property is still owned by the service member or dependent at the time relief is sought;
- e. The ability to meet the financial obligation is "materially affected" by the service member's active duty obligation.

9. Q. Can judicial proceedings be delayed?

A. A service member who is involved in civil (not criminal) judicial proceedings as either a plaintiff or defendant is entitled to a stay of these proceedings if the court finds that his or her ability to prosecute or defend an action is "materially affected" by reason of his or her active duty service. Courts are reluctant to grant long-term stays of proceedings and tend to

require service members to act in good faith and be diligent in their efforts to appear in court. A service member's ability to prosecute or defend a civil suit is shown to be "materially affected" when it can be satisfactorily demonstrated to the court that his or her military duties prevent him or her from appearing in court at the designated time and place. An affidavit setting out all the facts and circumstances is usually required.

10. Q. If a service member is sued, can a default judgment be entered against him or her in his or her absence?

A. When a suit is filed, notice of it must be served on the defendant. There are deadlines for filing the service member's response. When no response is filed on time, a default is usually entered against the defendant. The SSCRA requires the plaintiff to sign and file an affidavit with the court stating that the defendant is not in the military service before a default can be taken. When the affidavit shows that the defendant is in the military, no default can be taken until the court has appointed an attorney to represent, in a very limited capacity, the service member defendant. The court appointed attorney will only represent the service member's SSCRA interests by determining if a request for a stay of proceedings should be made to allow the service member an opportunity to appear and defend. It will be up to the service member to retain an attorney to represent him or her during the trial. The filing of a false affidavit subjects the filer to a misdemeanor prosecution. Any such matter should be brought to the attention of the U.S. Attorney's Office, as well as the service member's civilian attorney.

11. Q. What if I cannot pay my income taxes because of a call to active duty?

A. The service member's ability to pay the tax must be "materially affected" (impaired) by reason of the active duty service. If this is the case, the SSCRA defers (for up to six months after termination of military service) collection of any state or federal income tax on military or nonmilitary income if the payment is due either before or during military service. No interest or penalty may be charged for the nonpayment of any tax on which collection was deferred.

12. Q. Are there other protections for service members under the SSCRA?

A. Yes. You should address your questions to a legal assistance attorney.

## TELEPHONE vs. MAIL ORDERING

Many mail-order marketers now offer 1-800 tollfree telephone numbers for easy ordering. Shopping by telephone is often a convenient alternative to shopping by mail. But there is an advantage to shopping by mail--your purchase will be covered by the Federal Trade Commission's Mail Order Rule. Purchases made by telephone are not covered.

The Mail Order rule requires companies to ship your order within the time promised in their advertisement. If no time period is promised, the company must ship your order within 30 days after they receive it, unless you are contacted and agree to a specific delay. When there is a shipment delay, the company must send you an "option notice," giving you the option of either consenting to the delay or cancelling the order and receiving a refund.

There may be times when you prefer to order by mail, but only have the company's 1-800 tollfree telephone number. In that situation, you can call the company and ask for its mailing address. Calling is also useful to determine the company's refund policy, the availability of the product you want, and the total cost of your order. Consider placing your order by phone but sending payment by mail. This will give you the protection of the Mail Order Rule.

If you prefer the ease of buying by phone, however, you assume the responsibility for merchandise that is not delivered or is delivered late. In making your decision to buy by phone, consider your prior experience with the company or its general reputation.

When placing an order by phone, make sure you keep a record of the company's name, address and telephone number; the price, description, and item numbers of the merchandise you ordered; the total cost of the order; the method of payment you used (e.g. check, the credit card, C.O.D.); the method of shipment and anticipated delivery date; and the date you placed the order. When ordering by mail, make a copy of the order form which should contain comparable information. With either method of ordering, it is also useful to keep a copy of the advertisement or catalogue that led you to place the order. Also, with either method of ordering, there are special protections for you if you paid by credit card. A law known as the Fair Credit Billing Act gives you certain rights if you never received the merchandise ordered and are billed anyway. This federal law may allow you to withhold payment on the disputed portion of your credit card bill until the dispute is resolved. However, make sure your dispute is

## TELEPHONE V. MAIL ORDERING

covered by this law before you withhold payment. You can learn more about your rights under the Fair Credit Billing Act by writing the Federal Trade Commission (FTC) for a free brochure. Write: Federal Trade Commission, Washington, DC 20580.

If you have problems with a purchase made by phone or mail, first try to resolve your dispute with the company. You may do this directly, or with the help of your local Legal Assistance Office. If this does not work, some of these organizations may be able to help.

1. Postal Inspectors. Call your local postmaster and ask for the "Inspector-in-Charge."
2. State and local consumer protection offices. Contact the offices near you and near the company.
3. Action line and consumer reporters. Check with your local newspaper, TV, and radio stations and ask who to contact.
4. The Better Business Bureau (BBB). Contact the BBB in your area or near the company.
5. The Direct Marketing Association (DMA). The DMA can be reached at: 6 East 43rd Street, New York, NY 10017.

You also can notify the Federal Trade Commission about your complaint. Although the FTC cannot act directly to help you resolve your dispute, the staff may be able to provide some useful information. Write: FTC, 6th and Pennsylvania Avenue, N.W., Washington, DC 20580. For more information about the Mail Order Rule, write for a free brochure at the same address.

Finally, you should always consult your local Legal Assistance Office.

## **TIME-SHARES AND YOUR LEGAL RIGHTS**

Have you ever received a notice in the mail announcing that you were a "Guaranteed Prize Winner"?

The announcement makes it look as though you will get something valuable for nothing. But that is not true. You will have to earn it by sitting through a long sales pitch, often of more than two hours, and frequently using high pressure tactics. For that, you will earn the cheapest of the "gifts" listed.

The notices are part of a "come-on" for various kinds of promotions. One form now commonly seen is called "time-sharing."

### **TIME-SHARING**

Time-sharing is presented as an affordable way to buy a vacation home. The consumer buys the use of a facility in a resort area for a particular time during the year and for a specified number of years. Time-sharing has been used to sell three-bedroom condominiums in the Bahamas or tent sites in undeveloped campgrounds. A feature promoters emphasize is that customers can exchange their facilities for similar accommodations at other areas around the world.

Although time-sharing has blossomed in the United States, confusion still exists about forms of ownership, investment, and resale potentials, and exchangeability.

### **OWNERSHIP**

The two most common types of time-sharing purchases are deed and title (sometimes called interval ownership), and right to use (sometimes called license to use).

"Deed and title ownership" means the buyer acquires:

- \* a specific facility, for
- \* a specified length of time each year, for
- \* a specified number of years (40 is a common span), and
- \* a deed (and sometimes a title policy).

"Right to use" means the buyer acquires the right to use:

- \* a particular kind of facility at a specific resort, for
- \* a specified length of time each year, for

- \* a specified number of years.

**DIFFERENCE:** This is important. Deed and title buys legally registered real property that is a tangible asset no matter what happens to the management of the resort. Right to use is only a contractual promise by the resort management that you will get what you paid for and is only as good as the integrity of the promisor.

**THE TIME PERIOD:** Time-sharing is sold either as fixed time--that is, the same time period each year--or as floating time, in which the length of time stays the same but specific periods are allocated by some form of reservation system. Time periods are also rated as high, medium, or low according to the demand for the resort area; this rating affects the exchangeability of your facility.

#### **EXCHANGEABILITY**

Many people buy time-share facilities in order to exchange them for accommodations in other resort areas. They are often disappointed.

Exchangeability depends upon supply and demand. The three-primary factors involved in exchanging time-share units are:

- \* the desirability of the resort area
- \* the desirability of the time period offered
- \* the attractiveness and size of the accommodations

Someone with a two week time-share in a three-bedroom condominium at Aspen, Colorado, during the height of the ski season is probably not going to want to exchange it for one week in an efficiency apartment at No Tree, Texas, during mid-August.

Experienced time-share owners say: "DO NOT BUY FOR EXCHANGEABILITY."

#### **INVESTMENT AND RESALE**

Many promoters paint glowing pictures of the investment potential and ease of resale of the units in their development. Responsible people in the industry, however, DO NOT promote or sell time-sharing as an investment because time-share units are usually difficult to rent or resell. This situation may change in time, but for now, because of the building boom in new time-sharing developments, markets have not been established for renting or reselling time-share units.

## TIME SHARES

### WHAT THE LAW SAYS

Legal Assistance Offices receive many complaints about time-sharing promotions. Complaints range from disappointment with the prize or high pressure sales tactics to outright deception and fraud. While it is difficult for an individual to file suit over the quality of a "gift" or "prize," a number of time-share promotions may violate state deceptive trade practices and consumer protection acts. Typical legal violations include:

- \* Not informing consumers they must listen to a lengthy sales pitch before receiving their "prizes."
- \* Misrepresenting the physical condition of the facility.
- \* Misrepresenting the market value of the facility.
- \* Misrepresenting the resale or exchange potential of the facility.
- \* Making oral promises that were omitted from the written contract.
- \* Including fees and obligations in the contract that were never mentioned orally.

These provisions vary from state to state and you should consult your Legal Assistance Office. For example, many states have a "Cooling-Off Period." This means you have a right to cancel a time-share contract should you change your mind in a few days. Other states do not. This means: If you've signed it, you've bought it.

### BUYING A TIME-SHARE

Time-sharing can be an affordable way to own a vacation home. Before you buy, you should be able to answer YES to all these questions:

- \* Are you POSITIVE you want to spend ALL your vacations there?
- \* Have you visited the facility? Are you satisfied with its quality, with the stability of the management, and with the terms of the contract? Have you checked out this time-share development with the Better Business Bureau, the Attorney General's Consumer Protection Office or your Legal Assistance Office?

- \* Have you talked to some long-time owners in this time-share facility?
- \* Can you afford both the facility and the round trip travel costs each year?

**DO NOT BUY IF:**

- \* You want to rent out the facility.
- \* You plan on reselling it.
- \* You plan on exchanging vacation sites frequently.

**BUYING TIPS**

**BEWARE OF ANY PROMOTIONS THAT:**

- \* Will not physically take you to the facility. (Some promoters claim the place is built when it is really only a hole in the ground.)
- \* Offer you a special price "for that day only."
- \* Subject you to a long and harrassing sales pitch.
- \* Will not let you take the contract home to study.

**DO NOT SIGN A CONTRACT ON THE SAME DAY AS THE SALES PITCH.**

If the price is fair, it will still be in effect the next day. Many people readily admit they became much smarter the day after they signed a time-share contract.

TAKE-1

FOR UNMARRIED COUPLES

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

FOR USE SPECIFICALLY IN NORTH CAROLINA LAW OFFICES.

1. Q. What is the legal age for marriage in North Carolina?

A. While laws in different states vary, the law in North Carolina requires generally the parties be at least eighteen (18) years of age.

2. Q. When is consent of a parent necessary?

A. A couple may marry if one or both are between sixteen (16) and eighteen (18) with parental consent.

3. Q. Does North Carolina recognize common law marriage?

A. Common law marriage, which is recognized in some states, involves a couple living together and holding themselves out to everyone as man and wife. Even though there is no marriage ceremony or certificate, this marriage is considered valid in those states that recognize common law marriage. North Carolina is not one of these states, and no amount of living together in this state can result in a valid marriage, without a valid marriage ceremony.

4. Q. Other than age, what does the law require for marriage in North Carolina?

A. First, the parties must both be unmarried and no closer than first cousins to each other. Next, they must obtain a marriage license from the Register of Deeds in the county where the marriage is to take place. There is no waiting period and the license is good for sixty days after it is issued.

5. Q. Are there any medical requirements for a marriage license?

A. The man and woman must obtain a doctor's certificate showing that they are mentally competent and free from venereal disease and infectious tuberculosis. Further information is available about these certificates from the Register of Deeds at the county courthouse.

6. Q. Does a woman have to assume her husband's last name upon marriage in North Carolina?

A. A wife usually assumes her husband's last name, but she is not required to do so. She may retain her maiden name at the time of marriage with no formal legal proceedings. On the other hand, if the wife has already taken her husband's name upon marriage and wants to resume her maiden name later, she must petition the court for the name change. She has the right to establish and maintain a separate credit rating, credit cards and driver's license in her own name (maiden or married, whichever she decides to use). In North Carolina, the couple may give a child of theirs at birth the last name of the father or mother or another last name of their own choice.

## UNORDERED MERCHANDISE

. . . A military wife responds to a newspaper advertisement offering a free "trial" pair of pantyhose. She is surprised when she receives a package of four, with a bill.

. . . A soldier receives a shipment of books that he never ordered. Despite his objections, the book company continues to send him dunning notices, threatening his credit rating.

Thousands of people are placed in similar situations every year. Fortunately, they did not have to pay for merchandise they did not order because federal laws prohibit mailing unordered merchandise to consumers and then demanding payment.

Here are answers to some questions you may have about unordered merchandise.

**Q. I received an item of clothing that I never ordered. Am I obligated to pay for the merchandise or return it?**

**A. No.** If you are sent clothing, cookware, linens, office supplies, or any other merchandise that you did not order, you have a legal right to keep the shipment as a free gift.

**Q. If I keep unordered merchandise for free, must I notify the seller?**

**A.** While you have no legal obligation to do so, sending a letter stating your intention to keep the shipment as a free gift is an advisable precaution. Your letter may discourage the seller from sending you repeated bills or dunning notices, or it may help to clear up an honest error. You may want to send your letter by certified mail and keep the return receipt and a copy of the letter. This will help you to establish later, if necessary, that you did not order the merchandise.

If you ever receive bills or dunning notices for unordered merchandise, you can use the same approach. Write a letter to the company stating that you never ordered the item and, therefore, you have a legal right to keep the merchandise for free. Again, you may wish to send your letter by certified mail and keep the return receipt and a copy of the letter.

## UNORDERED MERCHANDISE

Q. The unordered merchandise I received was apparently the result of an honest shipping error. What should I do?

A. Write the seller and offer to return the merchandise provided the seller pays for postage and handling. Give the seller a specific and reasonable amount of time (i.e., 30 days) in which to pick up the merchandise or arrange to have it returned at no expense to you. Inform the seller that after the specified time period has passed, you reserve the right to keep the merchandise or to dispose of it as you wish.

Q. Is there any merchandise that may be sent legally without my consent?

A. Yes. Free samples that are clearly and plainly marked as such, and merchandise mailed by charitable organizations asking for contributions may be sent legally without an order from you. In either case, you may keep such shipments as free gifts.

Q. Is there any way to protect myself from shippers of unordered merchandise?

A. When ordering goods advertised as "free," "trial," or "unusually low priced," be especially cautious. Read all the fine print to determine if you are joining a "club," with regular purchasing or notification obligations. Also, if you are considering a purchase from a mail order company, learn as much as possible about the company's reputation and return policies to avoid a substitution problem. When placing an order by phone, keep a record of the name of the clerk who takes your order; the company's name, street address, and phone number; the price, description, and item numbers of the merchandise you ordered; the total cost of the order; the method of payment you used (e.g., check, the credit card, C.O.D.); the method of shipment and anticipated delivery date; and the date you placed the order. When ordering by mail, make a copy of the order form, which should contain comparable information. With either method of ordering, it also is useful to keep a copy of the advertisement or catalog that led you to place the order. This may make it easier to contact the company if a problem arises.

Q. Where can I go for help in dealing with unordered merchandise problems?

A. Always start by trying to resolve your dispute with the company itself. If this is unsuccessful, you can seek assistance from your local Legal Assistance Office, your local U.S. Postal Inspector, your state or local consumer protection office, the Better Business Bureau in your area, or the Direct Marketing Association, 6 East 43rd Street, New York, New York 10017.

UNORDERED MERCHANDISE

You also can contact the Federal Trade Commission. Although the FTC cannot resolve your individual complaint, the agency can take action against the company if it finds evidence of a pattern of deception, unfair practices, or statutory violations. Send your letter to: Correspondence Branch, Federal Trade Commission, Washington, DC 20580.

## USED CAR BUYING: A CHECKLIST

Shopping for a used car? A used car can be a bargain, but you should know some important facts before you buy your car.

### "As Is" Means No Warranty

Only about one-half of all used cars sold by dealers come with a written warranty. The other half are sold "as is," without a written warranty. This means that if you have problems with the car after you buy it, you must pay for any needed repairs yourself. The dealer has no further responsibility for the car once the sale is complete and you drive off the lot.

If you buy a car from a private individual (for example, through classified newspaper ads), you are probably buying the car "as is." Without a written contract with specific repair provisions, the seller in most states has no further responsibility for the car. Even in the few states that do not permit "as is" sales, the seller's only obligation, without a written warranty, is to sell you a car that is capable of providing basic transportation--nothing more. Of course, if you have a written contract, the seller must live up to the promises stated in the contract. Depending on its age, the car may be covered by a manufacturer's warranty or service contract. Ask the seller for details.

### Warranty Protection

The used car you buy may come with a written warranty. Examine it carefully before you buy to see what is covered and what is not. If the dealer makes any promises to repair the car that are not included in your written warranty, ask the dealer to add those promises to the written warranty.

When you buy your used car, look for and ask about the following:

Used Car Buyers Guide: The Federal Trade Commission requires that a Buyer's Guide be posted in the window of used cars sold by dealers. The guide indicates whether the car is sold "as is" or under "warranty."

Full or Limited Warranty: This means that the dealer will pay all or part of the total repair bill for covered systems that fail during the warranty period. Ask the dealer for a copy of the written warranty and for an explanation of the warranty's coverage, exclusions, and repair obligations. Does the warranty cover both parts and labor? Does it cover only a percentage of the repair work or all of it?

## USED CAR BUYING

Implied Warranty: Some state laws do not permit dealers to sell used cars "as is." In those states, implied warranties may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the car. Ask your state and or local consumer protection office or Legal Assistance attorney whether this applies in your state.

### Service Contract

Some dealers may offer you a service contract. A service contract, like a warranty, provides repair and/or maintenance services for a specific time period. Unlike a warranty, however, a service contract costs extra. A service contract may overlap with warranty coverage. Compare the terms of any service contract offered to the terms of any warranty coverage on the used car. If you buy a service contract within 90 days of the time of sale, you may have additional rights contained in your state law. As with implied warranties, you should seek more information about how this works in your state. Additionally, a service contract will often be useless if you move out of state or overseas.

### Known Defects Disclosure

If a dealer knows about a major defect prior to selling you a used car, the dealer has an obligation, under law, to disclose it. If the dealer knows the car is seriously defective and does not tell you about the defect prior to sale, you may be able to break the contract. Again, make sure to find out the specific rules that apply in your state.

### Independent Inspections

Before you buy a used car, it is a good idea to ask the dealer if you may have the car inspected by an independent mechanic. In this way, you will have a chance to find out about the mechanical condition of the car before you buy it.

Some dealers will permit you to take the car to an independent mechanic. Others may have good reasons (for example, insurance restrictions) for denying this request.

With the dealer's permission, you can also ask an independent mechanic to come to the used car lot. Ask someone who knows about cars for the names of reputable mechanics. You can also find mechanics through advertisements, car repair establishments, and auto diagnostic centers in your community.

**Federal Odometer Requirements Act**

Federal law requires that sellers of automobiles disclose to buyers the accurate mileage on a car as indicated by the odometer or tell buyers if mileage is unknown. The law further provides civil penalties for those who intentionally violate these requirements. If you have purchased a used car and believe the mileage on the car to be higher than what was disclosed to you, see your legal assistance attorney.

**Used Car Inspection Checklist**

When you shop for a used car, you may find the following checklist helpful. Make sure you or your mechanic check for cracks, leaks, breaks, abnormal noises, and missing or inoperable parts in the systems of the car listed below.

- Frame and body: Is the frame straight and solid?
- Engine: Is there excessive oil leakage? Are the belts in place? Is the block or head cracked? Is the exhaust normal?
- Transmissior and drive shaft: Is the transmission fluid proper and seepage normal? Is the transmission solid? Is the drive shaft in good shape?
- Differential: Does the differential operate quietly without excessive seepage?
- Cooling system: Does the water pump function properly? Is there any leakage, including any from the radiator?
- Electrical system: Does the battery leak? Do the alternator, generator, battery, and starter work properly?
- Fuel system: Is there any visible leakage?
- Accessories: Do gauges and warning devices work? Do the air conditioner, heater, and defroster work?
- Brake system: Do the warning lights work? Is the brake pedal firm under pressure? Does the vehicle stop in a straight line? Check the hoses, drum and lining for soundness. Are structural and mechanical parts solid?

## USED CAR BUYING

- Steering system: Is there too much free play in the steering? Are the front wheels aligned properly? Check the power unit belts for cracks or slippage and the unit fluid levels.
- Suspension system: Are the ball joint seals intact? Are the structural parts solid and straight? Are springs and shocks properly connected? Check shock absorbers for leakage and loose mountings.
- Tires: Check the tread for depth of wear, the tire sizes for matching, and for any other obvious damage.
- Wheels: Look for any visible cracks, damage, or repairs. Check for loose or missing mounting bolts.
- Exhaust system: Check for leakage and exhaust smoke when the engine is running.

## UTILITY CREDIT

My husband and I always paid our phone, gas, and electric bills promptly. Then . . . suddenly . . . he was gone. When I tried to get utility service in my own name, each company wanted me to make deposits ranging from \$25 to \$100. Can they do this?

Women sometimes write the Federal Trade Commission with this type of question. Utility credit discrimination is illegal under the Equal Credit Opportunity Act (ECOA). This Act contains specific rules that utility companies, department stores, and other creditors must follow when evaluating their customers' credit histories.

A utility account is generally a credit account. You get service now and pay for it later--and that is credit. Like any other creditor, a utility company keeps a record of your payment patterns. This record is your utility credit history.

Utility companies frequently require a new customer to make a deposit or to get a letter of guarantee from someone who will agree to pay the bill if the customer does not. Under the law, requiring a deposit or letter of guarantee can be the same thing as denying credit, but not always.

### WHEN A DEPOSIT CAN BE REQUIRED

The utility company can generally require a deposit if you have a bad utility credit history, or if you are a new customer and all new customers are required to pay deposits. However, in some situations, it is illegal to require deposits. For example, the utility company might ask you to pay a deposit if there is no record of your name on your husband's account. But if you tell the company you had previous service in your husband's name, the company must consider his credit history as yours.

### YOU CAN CHALLENGE A BAD CREDIT HISTORY

But there is another side of the coin. If your husband's credit history was bad, the company might ask you to pay a deposit or get a letter of guarantee. The ECOA gives you the opportunity to prove that your husband's bad credit history did not reflect your unwillingness or inability to pay. If you can convince the utility company that you were not responsible for the bad credit history, the company must lift its requirements. For example, if

## UTILITY CREDIT

you can prove that you did not live with your husband when the account was overdue, the company must take that into consideration. If you never saw the bills, or paid them as soon as you discovered they were overdue--that also must be considered.

If you cannot convince the company, you may have to pay a deposit or get a letter of guarantee. Or, you may be asked to pay your husband's old debts before your service is connected. In the latter case, the company's right to take such action is governed by state law, not the ECOA. If this happens, contact your local consumer office for more information.

## GET THE REASON IN WRITING

Whenever you are denied credit--including utility credit--you have the right to know the specific reason. Therefore, if you are asked to pay a deposit, request the reason in writing before you pay. If you cannot wait for the hookup, pay the deposit but write on your check, "Paid Under Protest." Enclose a statement saying why you think you should not have to pay a deposit. If you pay without noting a protest, you may waive your right to know the specific reason why your credit was denied.

Usually your spouse's utility credit history can only be considered if your spouse is living with you or using your account. However, if you live in a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington), the utility company can ask questions about your spouse even if you are no longer living together.

If you cannot resolve your dispute, you may want to get more detailed advice about your rights under the ECOA. You also may wish to contact the Federal Trade Commission (FTC) about your complaint. Although the FTC cannot resolve your individual dispute, the staff may be able to provide some useful information. In addition, information about your experience is important to the enforcement of the Act. Write: FTC, Division of Credit Practices, Washington, DC 20580.

## VEHICLE ACCIDENT CHECKLIST

### WHAT TO DO IF YOU HAVE AN ACCIDENT

- Before the accident, store a copy of this checklist in the glove compartment of your car(s).
- Stop immediately at the scene of the accident or as close as possible to it. Limit the obstruction of traffic as much as possible.
- Render assistance to any injured person, including arranging for carrying the person to a physician or hospital for medical treatment if it is apparent that treatment is necessary. This should always be done if the person requests it.
- Give owner's name, address and the registration number of the vehicle and, upon request, exhibit the driver's license to the person hit or to the people in the other car.
- Do not admit fault or disclose your insurance policy limits.
- If you strike an unattended vehicle, attempt to locate the operator/ owner of the vehicle, or leave a written notice in a conspicuous place on the vehicle. Give your name and address and the name and address of the owner of your vehicle, if different.
- If you are on the installation, report all vehicle accidents to the military or security police immediately. If off the installation, you must report all accidents involving death or injury to the police. You should report all accidents even if no one is injured.

PERSONAL ACCIDENT REPORT

Accident reports will be filed by law enforcement personnel. However, the information on this form may be helpful to you as a personal record if you are involved in an accident. If you have the time and the opportunity to ask the necessary questions and make the necessary observations, we advise you to do so. However, be certain that in doing so you do not interfere with the investigation of police who respond to the scene and whose instructions must be followed.

1. Time and Place of Accident

a. Time and Date: \_\_\_\_\_

b. Location (Street, County, City, State):  
\_\_\_\_\_2. Other Party Involveda. Full name of owner:  
\_\_\_\_\_b. Address of owner (Street, County, City, State, Zip  
Code):  
\_\_\_\_\_

c. Owner's phone number: \_\_\_\_\_

d. Full name of driver:  
\_\_\_\_\_e. Address of driver (Street, County, City, State, Zip  
Code):  
\_\_\_\_\_

f. Driver's phone number: \_\_\_\_\_

g. Driver's age: \_\_\_\_\_

VEHICLE ACCIDENT CHECKLIST

3. Other Party's Insurance Carrier

a. Carrier's name:

---

b. Carrier's address:

---

c. Local Agent: \_\_\_\_\_

4. Other Party's Car

a. Make: \_\_\_\_\_

b. Model: \_\_\_\_\_

c. Year: \_\_\_\_\_

d. License Number: \_\_\_\_\_

State \_\_\_\_\_ Year \_\_\_\_\_

e. Description of damage:

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---

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---

f. Your dollar estimate of damage:

---

---

g. Where may the car be seen?

---

---

5. Persons Injured

a. Name:

---

b. Address:

---

---

c. Extent of Injuries (if known):

---

---

d. Where taken and by whom:

---

---

a. Name:

---

b. Address:

---

---

c. Extent of Injuries (if known):

---

---

d. Where taken and by whom:

---

---

VEHICLE ACCIDENT CHECKLIST

6. Your Car's Occupants (Other than you; do not complete if all information is already known by you.

- a. Name: \_\_\_\_\_
- b. Address: \_\_\_\_\_
- c. Phone Number: \_\_\_\_\_
  
- a. Name: \_\_\_\_\_
- b. Address: \_\_\_\_\_
- c. Phone Number: \_\_\_\_\_
  
- a. Name: \_\_\_\_\_
- b. Address: \_\_\_\_\_
- c. Phone Number: \_\_\_\_\_

7. Other Car's Occupants (Other than driver)

- a. Name: \_\_\_\_\_
- b. Address: \_\_\_\_\_
- c. Phone Number: \_\_\_\_\_
  
- a. Name: \_\_\_\_\_
- b. Address: \_\_\_\_\_
- c. Phone Number: \_\_\_\_\_

8. Witnesses (Other than car occupants)

- a. Name: \_\_\_\_\_
- b. Address: \_\_\_\_\_
- c. Phone Number: \_\_\_\_\_

d. Where was witness at time of accident?

---

---

a. Name: \_\_\_\_\_

b. Address: \_\_\_\_\_

c. Phone Number: \_\_\_\_\_

d. Where was witness at time of accident?:

---

---

9. Other Information

a. Your travel direction \_\_\_\_\_, speed \_\_\_\_\_, length of skid marks  
\_\_\_\_\_.

b. Other party's travel direction \_\_\_\_\_, speed \_\_\_\_\_, length of skid marks  
\_\_\_\_\_.

c. If intersection collision:

Which car entered first?

---

Was other car coming from right or left?

---

Where was other car when you first saw it?

---

Where was your car when you first saw other car?

## VEHICLE ACCIDENT CHECKLIST

- d. How many traffic lanes in your direction? \_\_\_\_\_  
and in other direction? \_\_\_\_\_
- e. Where was your car at the time of first impact on it?  
\_\_\_\_\_
- f. Where was other car at the time of first impact on it?  
\_\_\_\_\_
- g. Did you make a statement to police regarding the accident?  
\_\_\_\_\_
- h. Did the other party make a statement to police regarding the accident?  
\_\_\_\_\_
- i. Did police appear at the scene?  
\_\_\_\_\_
- j. Was a report taken by police?  
\_\_\_\_\_
- If so, what is the name, badge number, and phone number of policeman taking report  
\_\_\_\_\_  
\_\_\_\_\_
- k. Were you cited? \_\_\_\_\_ If so, for what?  
\_\_\_\_\_
- l. Was the other party cited?  
\_\_\_\_\_
- If so, for what?  
\_\_\_\_\_  
\_\_\_\_\_

## VEHICLE ACCIDENT CHECKLIST

### 10. Sketch of Accident

Use this page to draw a sketch of the accident. Number your car #1, and other car #2. Mark stop signs and stop lights. Give street names or numbers of highways. Show the position of your car before, at, and after impact.

## **WARRANTIES**

Before you make a major purchase, there is an important promise you should read. It is called the warranty--the manufacturer's or seller's promise to stand behind a product. Warranties vary in the amount of coverage they provide. So, just as you compare the style, price, and other characteristics of competing products before you buy, also compare their warranties.. The Magnuson-Moss Act of 1975 requires that if a manufacturer offers a warranty, it must be available for you to read before you make a purchase.

### **Written Warranties**

Written warranties come with most major purchases, although this is not legally required. The protection offered by written warranties varies greatly, so it is important to compare warranties before making a purchase. Here are some questions to keep in mind when comparing warranties.

- 1. What parts and repair problems are covered by the warranty?**

Check to see if any parts of the product or types of repair problems are excluded from coverage.

- 2. Are any expenses excluded from coverage?**

Some warranties require you to pay for labor charges.

- 3. How long does the warranty last?**

Check the warranty to see when it expires.

- 4. What will you have to do to get repairs?**

Look for conditions that could prove expensive, such as a requirement that you ship a heavy object to a factory for servicing.

- 5. What will the company do if the product fails?**

Find out if the company will repair it, replace it, or return your money.

## WARRANTIES

### 6. Does the warranty cover "consequential damages?"

Many warranties do not cover consequential damages. This means that the company will not pay for any damage the product caused, or your time and expense in getting the damage repaired. For example, if your freezer breaks and the food in it spoils, the company will not pay for the food you lost.

### 7. Are there any conditions or limitations on the warranty?

Some warranties will only provide coverage if you maintain or use the product as directed. For example, a warranty may cover only personal uses--as opposed to business uses--of the product. Make sure the warranty will meet your needs.

### Spoken Warranties

Sometimes a salesperson will make an oral promise, for example, that the store will provide free repairs. However, if this claim is not in writing, you may not be able to get the promised service. Have the salesperson put the promise in writing, or do not count on the service.

### Service Contracts

When you buy a car, home, or major appliance, you may be offered a service contract. Although often called "extended warranties," service contracts are not warranties. Warranties are included in the price of the product. Service contracts come separately from the product, at an extra cost. To decide whether you need a service contract, you should consider several factors: whether the warranty already covers the repairs that you would get under the service contract; whether the product is likely to need repairs and their potential costs; how long the service contract is in effect; whether you will take the product overseas where it is likely the service contract will be of no use to you; and the reputation of the company offering the service contract. To find out more about buying a service contract, write for a free fact sheet on "Service Contracts," Federal Trade Commission, Washington, DC 20580.

## WARRANTIES

### Implied Warranties

Although written warranties are not required by law, there is another type of warranty that is. It is called an "implied" warranty. Implied warranties are created by state law, and all states have them. Almost every purchase you make is covered by an implied warranty. The most common type of implied warranty is called a "warranty of merchantability." This means that the seller promises that the product will do what it is supposed to do. For example, a car will run, and a toaster will toast.

Another type of implied warranty is the "warranty of fitness for a particular purpose". This applies when you buy a product on the seller's advice that it is suitable for a particular use. For example, a seller who suggests that you buy a certain sleeping bag for zero-degree weather warrants that the sleeping bag will be suitable for zero degrees.

If your purchase does not come with a written warranty, it is still covered by implied warranties unless the produce is marked "as is," or the seller otherwise indicates in writing that no warranty is given. Several states, including Kansas, Maine, Maryland, Massachusetts, Mississippi, Vermont, West Virginia, and the District of Columbia, do not permit "as is" sales.

If problems arise that are not covered by the written warranty, you should investigate the protection given by your implied warranty.

Implied warranty coverage can last as long as four years, although the length of coverage varies from state to state. A lawyer or a state consumer protection office can provide more information about implied warranty coverage in your state.

### Lemon Laws

Many states also have laws requiring dealers to replace new cars or refund the purchase price if the new car has substantial defects that cannot be repaired. These laws are called lemon laws. In most states that have lemon laws, a dealer must be given 4 opportunities to fix the problem. If it cannot be fixed or if the car is in the shop for 30 or more days during its first year of service, the dealer must replace the car or refund the purchase price. This has been a very effective remedy in states with these laws.

## WARRANTIES

### Preventing Problems

To minimize the chance of a problem with your warranty, take these precautions.

- \* Research the reputation of the company offering the warranty with local or state consumer protection offices or the Better Business Bureau. A warranty is only as good as the company that offers it.
- \* Before you buy, read the warranty. See exactly what protection the warranty gives you.
- \* Save the sales slip and file it with your warranty. You may need it to document the date of your purchase or, in the case of a warranty limited to first purchasers, to prove that you were the original buyer.
- \* Perform any maintenance or inspections required by the warranty.
- \* Use the product according to the manufacturer's instructions. Abuse or misuse of the product may cancel your warranty coverage.

### Resolving Disputes

If you are faced with any problems with a product or with obtaining the promised warranty service, here are some steps you can take.

1. Read your product instructions and warranty carefully. Do not expect features or coverage that was never promised. Having a warranty does not mean that you automatically get a refund if a product is defective. The company may be entitled to try to fix it first. But if you reported a defect to the company during the warranty period and the product was not fixed, the company must correct the problem, no matter how long it takes.
2. Discuss your complaint with the retailer. Disputes can usually be resolved at this level. But if you cannot reach an agreement, write the manufacturer. Your warranty should list the company's mailing address. Send all letters by certified mail and keep copies.
3. If you cannot get satisfaction from the retailer or

## WARRANTIES

manufacturer, contact your local consumer protection agencies. They may be able to help.

4. Inquire about dispute resolution organizations which arbitrate disagreements if both you and the company are willing. The company or a local consumer protection office can tell you the organization to contact. Consult your warranty--dispute resolution may be required first step before going to court. Also, some state lemon laws require dispute resolution before court action.
5. Most states have small claims courts. If the amount of money in dispute is relatively small, usually below \$5,000, can file a lawsuit in a small claims court. The costs are low, procedures are simple, and lawyers are usually not needed. The clerk of the small claims court can tell you how to bring your lawsuit and what the dollar limits are in your state.
6. If none of these actions resolves your dispute, you may want to consider a lawsuit. The Magnuson-Moss Act allows you to sue for damages or for any other type of relief the court awards, including legal fees. Your military service Legal Assistance attorney will be able to advise you whether to proceed with a lawsuit.

TAKE-1

MAKING YOUR WILL

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, November 1992).

1. Q. WHAT IS A LAST WILL AND TESTAMENT?

A. A Last Will and Testament is the legal document which controls the disposition of your property at death and may provide for guardianship for your children after your death. A will is not effective until death. As long as you are living, your will has no effect and no property or rights to property are transferred by it.

2. Q. CAN MY LAST WILL AND TESTAMENT BE CHANGED?

A. Yes. Changes to a will are made by drafting a new will and destroying the old one, or by adding a "Codicil." A Codicil is a legal document which must be signed and executed in the same manner as your will. NEVER MAKE ANY CHANGES TO YOUR WILL without consulting an attorney. Changes on the face of your original will may make it invalid.

3. Q. WHAT IS MY LEGAL RESIDENCE?

A. Your legal residence is the state in which you have your true, fixed and permanent home and to which, if you are temporarily absent, you intend to return. Voting, paying taxes, owning property, motor vehicle registration and so on, are some indicators of one's legal residence. If you are a citizen of the United States, you must be a legal resident of some state. You cannot be a citizen at large. If you are a naturalized U. S. citizen, you are considered to be a resident of the state in which you were naturalized.

4. Q. IS MY LEGAL RESIDENCE IMPORTANT WITH REGARD TO MY WILL?

A. Yes. Your legal residence may affect where your will is probated and the amount of state inheritance or estate tax that may be paid at death.

5. Q. WHAT IS MY ESTATE?

A. Your estate consists of all of your property and personal belongings which you own or are entitled to possess at the time of your death. This includes real and personal property, cash, savings and checking accounts, stocks, bonds, real estate, automobiles, etc. Although the proceeds of insurance policies may

be considered part of your estate, a will does not change the designated beneficiaries of an insurance policy. The proceeds of an insurance policy, although part of your estate for tax purposes in most states, will normally pass to the primary or secondary beneficiary designated on the face of the respective policy.

6. Q. TO WHOM SHOULD I LEAVE MY ESTATE?

A. A person who receives property through a will is known as a "Beneficiary." You may leave all of your property to one beneficiary, or you may wish to divide your estate among several persons. You may designate in your will that several different items of property or sums of money shall go to different persons. In any event, you should decide on at least two levels of beneficiaries: "Primary beneficiaries" - those who will inherit your property upon your death; and "secondary beneficiaries" - those who will inherit your property in the event the "primary beneficiaries" die before you. You may want to also select a third level beneficiary in the event that both the primary and secondary beneficiaries die before you.

7. Q. MAY A PERSON DISPOSE OF HIS OR HER PROPERTY IN ANY WAY?

A. Almost, but not quite. For example, in most states, a married person cannot completely exclude a spouse. Generally, you are free to give your property to whomever you desire. However, most states have laws which entitle spouses to at least part of the other spouse's estate. This "statutory share" ranges generally from 1/3 to 1/2 of the other spouse's estate. Some states, such as Louisiana, also provide shares of the estate to children of the decedent. Insurance proceeds and jointly owned property may be controlled by other provisions of the law. If you have questions concerning the statutory share law in your home state, you should ask a legal assistance officer.

8. Q. SHOULD I NAME A GUARDIAN FOR MY CHILDREN IN MY WILL?

A. Yes. A guardian should be named in a will to ensure that the children and their estate are cared for in the event that both parents should die. Your guardian should be chosen with extreme care as this person will be charged with the duty of raising your children and managing their legal affairs. Do not automatically assume that your parents or any other relative will be suitable guardians. Such factors as the age of the guardian, age of the children, religion, social status, economics, relation of the proposed guardian to the children, if any, should be considered in making your decision. Additionally, a substitute guardian should be chosen with the same care as the primary guardian just in case the primary guardian cannot be the guardian.

9. Q. I want my parents to be the guardians of our children and my spouse disagrees. Do we have to agree on the appointment

of a guardian and substitute guardian?

A. In most cases yes. The guardianship provision is normally effective when both parents die at or about the same time. As an example, if the husband's will nominates his parents and the wife's nominates her parents and both husband and wife die at or about the same time, then the court will have to decide who is the proper party to be the children's guardian. That will cause undue hardship on all parties concerned as well as considerable unnecessary expense, a large part of which your estate will have to pay.

10. Q. WHAT IS AN EXECUTOR?

A. An executor (executrix, if female) is the person who will manage and settle your estate according to the will. You should also consider naming a substitute executor in the event that the named executor is unable or unwilling to act as the executor of your estate. By the wording of your will, you can require that your executor or substitute executor be required to post bond or other security, or you can waive this requirement, thereby saving expense to your estate. The choice is yours.

11. Q. WHAT IF I WANT TO SET UP A TRUST?

A. The resources available in this office permit the drafting of simple trust agreements. Consult with your legal assistance attorney for further details.

12. Q. WHAT IF I STILL HAVE QUESTIONS REGARDING MY WILL?

A. Ask them while your legal assistance officer is preparing your will. Be sure that you convey accurately your wishes for the distribution of your property to him or her.

13. Q. HOW LONG IS A WILL GOOD?

A. A properly drawn and executed will remains valid until it is changed or revoked. However, changes in circumstances after a will has been made, such as tax laws, marriage, birth of children or even a substantial change in the nature or amount of a person's estate, can affect whether your will is still adequate or whether your property will still pass in the manner you chose. All changes in circumstances require a careful analysis and reconsideration of the provisions of a will and may make it wise to change the will, with the help of your legal assistance officer.

14. Q. DOES A WILL INCREASE PROBATE EXPENSE?

A. No. It usually costs less to administer an estate when a person leaves a will than when there is no will. A properly

drafted will may reduce the expense of administration in a number of ways. Provisions can be placed in wills which take full advantage of the federal and state tax laws. Drawing a will can avoid the expense of posting bond or appointing a guardian for your children. A will can save money for you and your family if it is properly drafted.

15. Q. HOW LARGE AN ESTATE IS NECESSARY TO JUSTIFY A WILL?

A. Everyone who owns any real or personal property should have a will regardless of the present amount of his or her estate. Your estate grows daily in value through the repayment of mortgages, appreciation of real estate, stocks and other securities, inheritances from relatives and other factors.

16. Q. WHAT HAPPENS WHEN YOU DON'T MAKE A WILL?

A. When a person dies without a will (or dies "intestate," as the law calls it) the property of the deceased is distributed according to a formula fixed by law. In other words, if you don't make a will, you don't have any say as to how your property will be divided. Take the case of a North Carolina resident dying without a will, for example. If this person dies without a will, leaving children, the surviving spouse would share the estate with the children. With no will, the surviving spouse receives the first \$15,000 in value and 1/3 of the remaining estate where there is more than one child or 1/2 of the remaining estate when there is only one child. Now usually a person would prefer that all of his estate, if it is not large, go to the surviving spouse. If there are any children under 18, the property cannot be delivered to them and a guardian must be appointed for them. A guardian will require considerable expense and could create legal problems that might have been avoided with a will. Most important for mothers and fathers, however, is not the disposition of their property after their death but rather the proper care and custody of their minor children. Grandparents, other family members and godparents do not automatically receive custody of children who do not have a surviving parent. Your will should specify the individual, as well as an alternate, you would like to designate as the guardian of your children. This decision on your part will be of great assistance to the court in determining who will receive the custody of your children.

17. Q. WHAT HAPPENS TO PROPERTY HELD IN THE NAMES OF BOTH HUSBAND AND WIFE?

A. Joint bank accounts and real property held in the names of both husband and wife if held with a right of survivorship usually pass to the survivor by law and not by the terms of the deceased's will. There are many cases, however, in which it is not to your advantage to hold property in this manner.

18. Q. IS A LIFE INSURANCE PROGRAM A SUBSTITUTE FOR A WILL?

A. No. Life insurance is only one kind of property which a person may own. If a life insurance policy is payable to an individual, the will of the insured has no effect on the proceeds. If the policy is payable to the estate of the insured, the payment of the proceeds may be directed by a will. The same holds true for Servicemen's Group Life Insurance (SGLI) proceeds. The SGLI beneficiary designation controls to whom payments will go. The careful person will have a lawyer and a life insurance counselor work together on a life insurance program, as one important aspect of estate planning.

## WORK-AT-HOME SCHEMES

In newspapers and magazines around the country you may see ads like this:

Would you like to earn hundreds of dollars a week at home, in your leisure time? Many people are supplementing their income in a very easy way. Let us tell you how. . . .

An offer like this may sound very attractive, particularly if you are unable to leave your home to work. But, be cautious about work-at-home ads, especially ones that promise you large profits in a short period of time. While some work-at-home plans are legitimate, many are not. Home employment schemes are one of the oldest kinds of classified advertising fraud.

What many of these ads do not say is that you may have to work many hours without pay. There also may be hidden costs. Many work-at-home schemes require you to spend your own money to place ads in newspapers, make photocopies, or buy the envelopes, paper, stamps, and other supplies or equipment needed to do the job. The company also may demand that you pay a membership fee and make regular payments in order to get continued instructions or materials. Consumers deceived by these ads have lost thousands of dollars as well as wasted their time and energy.

### Common Work-at-Home Schemes

Work-at-home ads may advertise these types of employment:

- \* **Envelope-Stuffing.** Work-at-home schemes come in many varieties, but the most common type is envelope-stuffing. Promoters of these programs usually advertise that, for a "small" fee, they will tell you how to earn money stuffing envelopes at home. Only when it is too late do you find out the promoter really has no employment to offer. What you are likely to receive for your fee is a letter telling you to place that same ad in newspapers or magazines, or to send the ad to friends and relatives. The only way you will earn money is from the people who respond to your work-at-home ad.
- \* **Assembly or Craft Work.** Assembly or craft work is another common type of work-at-home scheme. These programs often require you to invest hundreds of dollars in equipment or supplies or many hours of time to produce goods for a company who has promised to buy them. For example, you might be required to buy from the company a sewing machine, a signmaking machine, or materials to

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make items such as aprons, baby shoes, or plastic signs. However, in fraudulent schemes, after you have purchased the supplies or equipment and performed the required tasks, the company does not pay you for your efforts. Many consumers, for example, have had companies refuse to pay for their work because it did not meet "quality standards." Unfortunately, no work is ever "up to standard." Thus you are left with relatively expensive equipment and supplies, and no income. In reality, those who produce goods in response to such ads must usually find their own customers.

### **Precautions Against Fraudulent Schemes**

If a work-at-home program is legitimate, its sponsor should readily tell you--in writing and for free--what is involved. Here are some questions you might ask a potential employer:

- \* What tasks will I be required to perform? (Ask the program sponsor to list every step of the job.)
- \* Will I be paid on salary or commission?
- \* Who will pay me?
- \* When will I get my first paycheck?
- \* What is the total cost of the work-at-home program, including supplies, equipment, and membership fees? What will I get for my money?

The answers to such questions may enable you to detect whether a work-at-home scheme is legitimate and to guard against the loss of your money and time.

You also might wish to investigate the company's reputation by checking with the consumer protection agency and the Better Business Bureau in the area where the company is located. These organizations can tell you if they have received any complaints about the work-at-home program that interests you.

### **Where To Complain**

If you have already spent your money and time in a work-at-home program that you now have reason to believe may not be legitimate, contact the company and ask for your money back. Let

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the company know that you plan to notify officials about your experience. If you cannot resolve the dispute with the company, here are some organizations that may be able to assist you:

- \* The Attorney General's office in your state or in the state where the company is located. That officer will be able to advise you if you are protected by any state law that may regulate work-at-home programs.
- \* Your local consumer protection offices.
- \* Your local Better Business Bureau.
- \* Your local Postmaster. The U.S. Postal Service investigates fraudulent mail practices.
- \* The advertising manager of the publication that ran the ad you answered. The advertising manager may be interested to learn about the problems you have had with the company.
- \* The Federal Trade Commission. While the FTC cannot help resolve individual disputes, the agency can take action if there is evidence of a pattern of deceptive or unfair practices. Write: Federal Trade Commission, Division of Marketing Practices, Washington, DC 20580.
- \* Your Legal Assistance Office.